No. 15468

United States Court of Appeals

for the Ninth Circuit

JOSE RAMIREZ, MEYER GOODMAN, MICHAEL GULLON, BILL H. FREEMAN and ROBERT E. MILLER,

Appellants,

vs.

REFUGIO GONZALEZ LOZOYA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division.

FILED

AUG - 5 1957

PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-26-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LAUGHLIN E. WATERS,
U. S. Attorney;

LOUIS LEE ABBOTT,
Asst. U. S. Attorney,
Chief, Criminal Division;

JOSEPH F. BENDER,
Asst. U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

For Appellee:

DAVID C. MARCUS,
215 West Fifth Street,
Los Angeles, California.

United States District Court for the Southern District of California, Central Division

No. 25033

UNITED STATES OF AMERICA,
Plaintiff,

vs.

REFUGIO GONZALEZ LOZOYA,
Defendant.

INDICTMENT

[U.S.C., Title 26, Secs. 4742(a) and 4744(a)—Illegal Transfer, Acquisition of Marihuana]

The grand jury charges:

Count One

[U.S.C., Title 26, Sec. 4742(a).]

On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Refugio Gonzalez Lozoya did knowlingly and unlawfully transfer approximately nine and one-half pounds of marihuana to another without obtaining a written order on a form issued for that purpose by the Secretary of the Treasury of the United States. [2*]

Count Two

[U.S.C., Title 26, Sec. 4744(a)]

On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the South-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

ern District of California, defendant Refugio Gonzalez Lozoya, being a transferee required to pay the transfer tax imposed by Section 4741(a), Title 26, United States Code, did knowingly and unlawfully acquire and obtain approximately nine and one-half pounds of marihuana without having paid such tax.

A True Bill,

/s/ RICHARD STEPHENSON,
Foreman.

/s/ LAUGHLIN E. WATERS,
United States Attorney.

[Endorsed]: Filed May 29, 1956. [3]

[Title of District Court and Cause.]

MINUTES OF THE COURT

JUNE 4, 1956

At: Los Angeles, Calif.

Present: Hon. Wm. C. Mathes, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: John K. Duncan.
Counsel for Defendant: Angelo L. Baldwin (for Att'y David Marcus).
Defendant present (in custody).

Proceedings:

For arraignment and plea.

Defendant is arraigned.

It Is Ordered that cause is continued to June 11, 1956, 9:30 a.m., for plea.

JOHN A. CHILDRESS,
Clerk. [4]

[Title of District Court and Cause.]

MINUTES OF THE COURT

JUNE 11, 1956

Present: Hon. Wm. C. Mathes, District Judge.
U. S. Att'y, by Ass't U. S. Att'y: John K. Duncan.
Counsel for Defendant: Angelo Baldwin.
Defendant present (in custody).

Proceedings:

For plea.

Defendant pleads not guilty to counts 1 and 2 of Indictment.

Court Orders cause set for jury trial July 17, 1956, 10 a.m., on calendar of Judge Clarke.

JOHN A. CHILDRESS,
Clerk. [5]

TRANSCRIPT OF PROCEEDINGS

BEFORE THEODORE HOCKE, U. S. COMMISSIONER, SOUTHERN DISTRICT OF CALIFORNIA, AT LOS ANGELES

No. 19-199

UNITED STATES OF AMERICA

vs.

REFUGIO GONZALES LOZOYA

Complaint filed: May 18, 1956.
Charging violation: 26 USC 4742A.
Warrant issued: May 18, 1956.
Arraigned: May 18, 1956.
Wants prelim.
Mr. A. Gleason, Atty., appeared for Deft.
Bond $7,500.00.

Filed: June 21, 1956. [6]

United States District Court for the
Southern District of California

Commissioner's Docket No. 19
Case No. 199

UNITED STATES OF AMERICA

vs.

REFUGIO GONZALES LOZOYA

COMPLAINT FOR VIOLATION OF U.S.C.
TITLE 26, SECTION 4742(a)

Before: Theodore Hocke, Commissioner, Los Angeles, California.

The undersigned complainant being duly sworn states:

That on or about May 17, 1956, at Los Angeles County, California, in the Southern District of California, Refugio Gonzales Lozoya did knowingly and unlawfully transfer 10 pounds of marihuana not in pursuance of any written order on a form issued for that purpose by the Secretary of the Treasury of the United States.

[Seal] /s/ JOSE RAMIREZ,
Narcotic Agent.

Sworn to before me, and subscribed in my presence, May 18, 1956.

/s/ THEODORE HOCKE,
United States Commissioner.

United States District Court for the Southern District of California, Central Division

Commissioner's Docket No. 19
Case No. 199

UNITED STATES OF AMERICA

vs.

REFUGIO GONZALES LOZOYA

WARRANT OF ARREST

To Any U. S. Marshal or Other Authorized Officer.

You are hereby commanded to arrest Refugio Gonzales Lozoya, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with transfer 10 lbs. marihuana not in pursuance of written order on form prescribed by Secretary of Treasury in violation of U.S.C., Title 26, Section 4742a.

Date May 18, 1956.

/s/ THEODORE HOCKE,
United States Commissioner.

Return

Received 5/18, 1956, at Los Angeles, and executed by arrest of Defendant at Los Angeles County Jail on 5/18, 1956.

ROBERT W. WARE,
U. S. Marshal.

By /s/ C. W. ROBB,
Deputy.

Date 5/18, 1956.
Bond $7,500. [8]

United States District Court for the Southern District of California, Central Division

Commissioner's Docket No. 19
Case No. 199

UNITED STATES OF AMERICA

vs.

REFUGIO GONZALES LOZOYA

FINAL COMMITMENT OF
REFUGIO GONZALES LOZOYA

To: The United States Marshal of the Southern District of California;

You are hereby commanded to take the custody of the above-named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Southern District of California approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law. The above-named defendant was arrested upon the complaint of Jose Ramirez, Narcotics Agent, charging that on or about May 17, 1956, in the Southern District of California, the defendant did transfer 10 pounds of marihuana not in pursuance of written order, etc., in violation of U.S.C. Title 26, Section 4742a and he (having duly waived preliminary examination before me on May 18, 1956), has been directed to furnish bond in the sum of Seventy-five Hundred dollars ($7500.) for

his appearance in the United States District Court for the Southern District of California at Los Angeles, in accordance with all orders and directions of the court relative to his appearance before the court, and he has failed to do so.

/s/ THEODORE HOCKE,
United States Commissioner.

Dated: May 18, 1956.

Return

Received this commitment and designated prisoner on 5/18, 1956, and on 5/18, 1956, committed him to L. A. County Jail, and left with the custodian at the same time a certified copy of this commitment.

ROBERT W. WARE,
U. S. Marshal.

By /s/ C. W. ROSS,
Deputy.

Dated: 5/18, 1956.

[Endorsed]: Filed June 21, 1956. [10]

[Title of District Court and Cause.]

WAIVER OF JURY

The above cause coming on regularly for trial, defendant being present with counsel, ..., Esq., and the defendant being desirous of having

the case tried before the Court without jury, now requests of the Court that the case be so tried and hereby consents that the Court shall sit without a jury and hear and determine the charges against the defendant without a jury.

Dated: .....

.....,
Defendant in Pro Per.

I have advised the defendant fully as to his rights and assure the Court that his request for a trial without a jury is understandingly made.

/s/ REFUGIO GONZALES LOZOYA,

/s/ DAVID C. MARCUS,
Attorney for Defendant.

The United States Attorney consents that the request of the defendant be granted and that the trial proceed without a jury.

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney.

Approved:

/s/ THURMOND CLARKE,
United States District Judge.

[Endorsed]: Filed July 17, 1956. [11]

[Title of District Court and Cause.]

TRIAL MEMORANDUM

I.
Status of the Case

A. Defendant Refugio Gonzalez Lozoya is in custody in the County Jail.

B. Trial will be by jury.

C. It is estimated that the trial will require approximately two days.

D. The Government expects to call approximately seven or eight witnesses.

E. The indictment is in two counts as follows:

"Count One: On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant, [12] Refugio Gonzalez Lozoya did knowingly and unlawfully transfer approximately nine and one-half pounds of marihuana to another without obtaining a written order on a form issued for that purpose by the Secretary of the Treasury of the United States.

"Count Two: On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant, Refugio Gonzalez Lozoya, being a transferee required to pay the transfer tax imposed by Section 4741(a), Title 26, United States Code, did knowingly and unlawfully acquire and obtain ap-

proximately nine and one-half pounds of marihuana without having paid such tax."

II.
The Statutes Under Which the Defendant Is Being Prosecuted

United States Code, Title 26, Section 4742(a), provides in pertinent part as follows:

"It shall be unlawful for any person, whether or not required to pay a special tax and register under Sections 4751 to 4753, inclusive, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate."

United States Code, Title 26, Section 4744(a), provides in pertinent part as follows: [13]

"It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by Section 4741(a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by Section 4742 to be retained by him shall be presumptive evidence of guilt under this section and of liability for the tax imposed by Section 4741(a)."

III.
Summary of Evidence to Be Offered by the Government

The Government anticipates the evidence will substantially prove that Federal Narcotics Agent Jose Ramirez met defendant, Refugio Gonzalez Lozoya, on or about May 17, 1956, at about 7:30 o'clock p.m. in the parking lot of the Beverly Ranch Market, in the vicinity of Beverly and Popular Streets in Montebello, California. Said Agent and defendant discussed the price of defendant's marihuana for the instant and future transactions. Defendant stated his marihuana is of very good quality. Defendant opened the trunk of the automobile he had driven into said parking lot, removed a burlap sack containing approximately nine and one-half pounds of marihuana and placed this sack into the trunk of the Government automobile of Agent Ramirez.

Defendant Lozoya was observed by other Federal Narcotics Agents when defendant did the aforesaid acts. Said Agents then placed defendant under [14] arrest.

On or about May 24, 1956, demand was made on defendant to produce a written form issued by the Secretary of the Treasury authorizing transfer of said marihuana to Agent Ramirez. Defendant indicated that he had not obtained and did not have a written form for the transfer of said marihuana.

IV.

Pertinent Case Law

Transfer of Marihuana [Sec. 4742(a), Title 26, United States Code]

In the absence of the production of evidence by the defendant that he has complied with the provisions of Section 4742 relating to order forms, he shall be presumed not to have complied with such provisions. The burden is upon the defendant to prove that the marihuana found in his possession was transferred to him pursuant to a written order blank required by Section 4742.

United States v. Williams
(2nd Cir., 1947), 161 F. 2d 837 (relating to a former marihuana section 2591).

Unlawful Possession of Marihuana [Sec. 4744(a), Title 26, United States Code]

The essential elements of the offense specified in former Section 2593(a) [now Section 4744(a)] are: (1) That the defendant is a transferee, (2) required to pay the transfer tax. (3) That he obtained marihuana (4) without having paid the tax.

Symons v. United States
(9th Cir., 1950), 178 F. 2d 615, 621.

The gist of the offense specified in former Section 2593(a) is nonpayment by a transferee of marihuana of the required tax, and it is not an element of that offense that the transferee has failed after reasonable notice and demand to produce the re-

quired [15] order form. The latter part of the section relates to a means of proof and not to a definition of crime.

Cratty v. United States
(D.C. Cir., 1947), 163 F. 2d 844, 849.

Informants

The identity of an informer is confidential. It has been settled for many years that a government official cannot be compelled to disclose the identity of an informer.

Scher v. United States,
305 U. S. 251, at page 254.

This rule has been followed by the Court of Appeals for the Ninth Circuit in the case of:

McInes v. United States,
62 F. 2d 180, where it was said:

"* * * to inform is a statutory duty and sound public policy forbids exposing informers to possible, even probable, evil consequences."

The Government does not anticipate that any unusual questions of law will arise in this case.

V.

Counsel for defendant is herewith informed that the defendant may, if so advised, serve and file a similar "Trial Memorandum" at or prior to commencement of the trial.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney, Attorneys for Plaintiff, United States of America.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 12, 1956. [16]

[Title of District Court and Cause.]

MINUTES OF THE COURT, JULY 17, 1956

Present: Hon. Thurmond Clarke, District Judge.
U. S. Att'y, by Ass't U. S. Att'y Joseph F. Bender.
Counsel for defendant: David Marcus.
Defendant present (in custody) (on bond) (on O/R).

10:30 a.m. Court convenes with defendant and counsel present.

Proceedings: For Jury Trial:

Jury Waiver filed, signed by defendant, both counsel and approved by the court.

Both sides move to exclude all witnesses from courtroom until called and court grants motion and orders witnesses excluded until called.

Plaintiff's Exhibit 2 marked for identification. Plaintiff witness Jose Ramirez is called, sworn and testifies.

11:07 a.m. Court recesses; 11:15 a.m. Court reconvenes with both counsel and defendant present. Plaintiff witness Jose Ramirez resumes testimony.

12:00 noon Court recesses.

2:00 p.m. Court reconvenes with both counsel and defendant present. Plaintiff witness Jose Ramirez, heretofore sworn, resumes testimony.

3:00 p.m. Court recesses and at 3:20 p.m., court reconvenes with all parties present. Plaintiff witness Jose Ramirez resumes testimony. Plaintiff's Exhibit No. 1 marked for identification.

4:00 p.m. Court recesses until 9:45 a.m., July 18, 1956.

JOHN A. CHILDRESS,
Clerk. [18]

[Title of District Court and Cause.]

MINUTES OF THE COURT, JULY 18, 1956

Present: Hon. Thurmond Clarke, District Judge.
U. S. Att'y, by Ass't U. S. Att'y Joseph F. Bender.
Counsel for defendant: David Marcus.
Defendant present (in custody).

Proceedings: For further Court trial.

9:45 a.m., court convenes; defendant and counsel present; court orders trial proceed.

Jose Ramirez, heretofore sworn, resumes the stand on behalf of Gov't.

Government's Exhibits 1-A and 1-B, heretofore marked, are now offered.

Government's Exhibit 2, heretofore marked, now admitted and signed by the Court.

Government's Exhibit 1 marked for identification.

10:50 a.m., recess and Witness Ramirez is instructed not to discuss case with any other witness.

11:20 a.m., Court reconvenes; all present as before; Court orders trial proceed.

Myer Goodman is called, sworn and testifies behalf of Gov't.

Gov'ts Exhibits 1-A, 1-B and 1 are again offered in evidence.

12:15 p.m., recess to 2:00 p.m.

2:10 p.m., Court reconvenes; all present as before; Court orders trial proceed.

Meyer Goodman, heretofore sworn, is recalled.

3:00 p.m., recess.

3:20 p.m., Court reconvenes; all present as before; Court orders trial proceed.

Meyer Goodman resumes the stand on behalf of Gov't.

Gov't again moves to have admitted into evidence Gov't Exhibits 1-A, 1-B and 1 and Court reserves ruling until 10:00 a.m., 7/19/56, after the reporter reads certain testimony of Witness Jose Ramirez,

Narcotic Agent, to both counsel after Court adjourns.

4:00 p.m., Court adjourns until 10:00 a.m., July 19, 1956.

JOHN A. CHILDRESS,
Clerk. [19]

[Title of District Court and Cause.]

MINUTES OF THE COURT, JULY 19, 1956

Present: Hon. Thurmond Clarke, District Judge.
U. S. Att'y, by Ass't U. S. Att'y Joseph F. Bender.
Counsel for defendant: David Marcus.
Defendant present (in custody).

Proceedings: For further trial.

At 10:10 a.m. court convenes herein. Defendant and counsel for both sides are present. Court orders trial proceed.

Meyer I. Goodman, heretofore sworn, is recalled and testifies in behalf of Gov't. At 11:00 a.m. court recesses.

At 11:20 a.m. court reconvenes herein, and defendant and counsel for both sides being present, Court orders trial proceed.

Meyer I. Goodman resumes the stand and testifies further.

Gov't Exs. 1, 1-A and 1-B, heretofore marked for ident., and now offered and admitted in evidence.

Michael Gullon is called, sworn, and testifies in behalf of Gov't.

At 12:10 p.m. court recesses to 2:00 p.m. At 2:00 p.m. court reconvenes herein, and all being present as before, including defendant and counsel for both sides, Court orders trial proceed.

Michael Gullon resumes the stand and testifies further.

Bill H. Freeman is called, sworn, and testifies for Gov't.

At 3:10 p.m. court recesses.

At 3:20 p.m. court reconvenes herein, and defendant and counsel for both sides being present, Court orders trial proceed.

Gov't rests.

At 3:22 p.m. Refugio Gonzales Lozoya is called, sworn, and testifies in his own behalf.

At 4:00 p.m. It Is Ordered that cause is continued to 10:00 a.m., July 20, 1956, for further trial.

JOHN A. CHILDRESS,
Clerk. [20]

[Title of District Court and Cause.]

MINUTES OF THE COURT, JULY 20, 1956

Present: Hon. Thurmond Clarke, District Judge.

U. S. Att'y, by Ass't U. S. Att'y Joseph F. Bender.

Counsel for defendant: David Marcus.

Defendant present (in custody).

Proceedings: For further trial.

At 10:00 a.m. court convenes herein. Defendant and counsel for both sides are present. Court orders trial proceed.

Refugio Gonzalez Lozoya, heretofore sworn, resumes the stand.

Mary Catherine Macias is called, sworn, and testifies in behalf of defendant.

Defendant rests.

Robert E. Miller is called, sworn, and testifies on rebuttal in behalf of Gov't. At 10:40 a.m. Gov't rests.

Attorney Bender makes final statement.

Court Rules that defendant is not guilty on both counts of Indictment and Orders defendant released from custody.

It Is Ordered that Gov't Ex. 1 (narcotics) be placed in the vault in Room 329.

JOHN A. CHILDRESS,
Clerk. [21]

United States District Court
for the
Southern District of California
Office of the Clerk
231 U. S. Post Office and Court House
Los Angeles 12, California

July 30, 1956.

Re: USA v. Refugio Gonzalez Lozoya, No. 25,033, Crim., Central Division.

Received from the Clerk following exhibits in above case this July 30, 1956:

1-a (outer wrappings of box).

1-b (cardboard box).

1 (burlap sack, paper sacks and contents approximately 9½ pounds marihuana).

U. S. ATTORNEY,

By /s/ JOSEPH F. BENDER,
Assistant U. S. Attorney.

[Endorsed]: Filed July 30, 1956. [22]

United States District Court, Southern District of California, Central Division

No. 25033—CD—Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

REFUGIO GONZALEZ LOZOYA,
Defendant.

ORDER TO SHOW CAUSE

To Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller:

You and Each of You Are Hereby Ordered and Directed to be and appear before the Honorable Thurmond Clarke, Judge of the United States District Court, Southern District of California, Central Division, at the Court Room of said Court in the Post Office and Federal Building, Los Angeles, California, on Thursday, the 10th day of January, 1957, at the hour of 9:30 o'clock a.m., to show cause why the petition of the defendant, Refugio Gonzalez Lozoya, should not be granted and why you and each of you, and any other Federal Officers who contemplate testifying, should not be enjoined and restrained from testifying against the defendant, Refugio Gonzalez Lozoya, in that certain action in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of [23] California, entitled "People of the State of California, Plaintiff, vs. Refugio Gonzalez Lozoya, Defendant,

No. 133,389," on January 11, 1957, in Division 4 of said Municipal Court.

Pending the determination of this Order to Show Cause, you and each of you, and any other Federal officers who contemplate testifying in said Municipal Court action, are hereby enjoined and restrained from testifying therein, or from using the marihuana as evidence in the said proceedings, or from removing said marihuana from the jurisdiction of this Court.

Dated this 4th day of January, 1957.

/s/ THURMOND CLARKE,
United States District Judge.

Good cause being shown, time for service is hereby shortened two days prior to January 10th, 1957.

/s/ THURMOND CLARKE,
United States District Judge.

[Endorsed]: Filed January 4, 1957. [24]

[Title of District Court and Cause.]

PETITION OF REFUGIO GONZALEZ LOZOYA

To the Honorable United States District Court for the Southern District of California, Central Division:

The petition of Refugio Gonzalez Lozoya respectfully recites:

I.

That by an indictment returned by the Federal Grand Jury of the Southern District of California, Central Division, petitioner was charged in the above-entitled and numbered case in Count One:

> "On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the Southern District of California, * * * knowingly and unlawfully transfer approximately nine and one-half pounds of marihuana to another without obtaining a written order on a form issued for that purpose by the Secretary of the Treasury of the United [25] States."

and in Count Two of said indictment:

> "On or about May 17, 1956, in Los Angeles County, California, within the Central Division of the Southern District of California, * * * did knowingly and unlawfully acquire and obtain approximately nine and one-half pounds of marihuana without having paid * * *"

the transfer tax imposed by Section 4741(a), Title 26, United States Code; all as contained in said indictment on file in the above-entitled proceedings. That bail was fixed by said indictment in the sum of $7,500.00 by the District Court of the United States.

II.

That petitioner was taken into custody by virtue of the warrant issued pursuant to said indictment,

and thereafter, and on the 11th day of June, 1956, petitioner appeared before the Honorable Thurmond Clarke, District Judge of the United States for the Southern District of California, Central Division, and did enter a plea of not guilty to each of said counts.

III.

That said matter was thereupon duly set for trial and the trial of petitioner on his plea of not guilty to the charges contained in said indictment was had before the Honorable Thurmond Clarke commencing on July 17, 1956, and continuing thereafter on July 18, 19 and 20, 1956.

IV.

That during the trial of said proceedings the Court received in evidence Exhibit 1, being the marihuana as charged in said indictment.

V.

That during all times herein mentioned, Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller were and now are employees of the Federal Bureau of Narcotics, who appeared and testified on behalf of the Government in the proceedings before said United States District Court against petitioner concerning [26] the purported transactions involving said marihuana as alleged in said indictment.

VI.

That on the 20th day of July, 1956, upon the conclusion of the trial proceedings before said

Court, petitioner was found not guilty on each of the counts of said indictment as aforesaid and ordered released, and was released, from custody.

VII.

That said marihuana named in said indictment and received in evidence in said proceedings as Exhibit 1 was by the Clerk of said Court, as appears from the criminal docket of said Court, deposited in the vault of said Court in Room 329 of the Federal Building, Los Angeles, California, within the jurisdiction of said Judge and said Court as aforesaid.

VIII.

That said marihuana was at all times herein contrabrand and that the crime charged against petitioner and the contrabrand so deposited with said Court was subject to the provisions of Section 2463 of Title 28, U.S.C., which in part provides as follows:

> "All property taken or detained under any Revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof."

IX.

That subsequent to petitioner's acquittal of said charge in said Federal Court, the said Jose Ramirez, an employee of the said Federal Bureau of Narcotics of the Government of the United States as

aforesaid, did on the 10th day of August, 1956, appear at the office of the District Attorney of the County of Los Angeles, State of California, as the complainant against petitioner, the said Jose Ramirez having been one of the principal witnesses who appeared [27] at the trial of petitioner before the United States District Court and the Honorable Thurmond Clarke, and testified against petitioner, and did cause and procure the issuance of a complaint, No. 133,389, by signing, subscribing and swearing to said complaint and the facts therein alleged before the Municipal Court of the Los Angeles Judicial District, County of Los Angeles, State of California, in which the petitioner herein was charged with the illegal possession of contraband marihuana on the 17th day of May, 1956, at and in the County of Los Angeles, State of California, in violation of Section 11500 of the Health and Safety Code of the State of California, the said contraband marihuana so charged being the identical contraband marihuana upon which petitioner was indicted and charged in the Federal Court and received in evidence at the trial of petitioner before said Court.

X.

That a warrant was issued pursuant to said complaint in said Municipal Court and bail on said warrant was set in the sum of $10,000.00. That petitioner was thereafter apprehended and is now confined and restrained of his liberty in the County

Jail of the County of Los Angeles by virtue of said complaint and warrant.

XI.

That the preliminary hearing on said complaint is now set for January 11, 1957, in Division 4 of the Municipal Court of the Los Angeles Judicial District.

XII.

That without an order of the United States District Court and in violation of Section 2463 of Title 28, U.S.C., as aforesaid, said contraband marihuana was removed from the custody of said Court on the 30th day of July, 1956, and since said time has not been in the possession of said United States District Court; that said contraband marihuana was delivered to the possession of said Jose Ramirez, who did, on the 11th day of December, 1956, appear in said Municipal [28] Court and did at said time have in his possession the said Exhibit as aforesaid without an order or decree of said Court authorizing said Jose Ramirez or any other person to withdraw said Exhibit from the possession of said Federal Court as aforesaid.

XIII.

That said Jose Ramirez and Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, as aforesaid, being at all times herein mentioned Federal narcotic officers, intend to, and since the issuance of said complaint in said Municipal Court, as aforesaid, have intended to testify against

petitioner in said proceedings pending before the Municipal Court of the Los Angeles Judicial District, as aforesaid, and intend to use, and will use, said contraband marihuana in evidence against petitioner herein.

XIV.

Petitioner alleges that the acts, conduct and omissions constituting his purported possession and transfer of said contraband marihuana to another on May 17, 1956, as alleged in Count One of the indictment in the Federal Court, and his knowingly and unlawfully acquiring and obtaining approximately nine and one-half pounds of marihuana as alleged in Count Two of said indictment, are the same identical transactions and founded upon the alleged acts and omissions as alleged in the Municipal Court complaint as aforesaid, in which petitioner is charged with having "in his possession flowering tops and leaves of Indian Hemp (cannibas sativa) in violation of Section 11500, Health and Safety Code of the State of California," and that the said acts and omissions of petitioner as aforesaid in the Federal indictment and in the complaint issued by the State of California are purportedly founded upon the same identical acts and conduct of the defendant and necessarily included within the federal charge as aforesaid.

XV.

That the said State case as aforesaid against petitioner herein [29] is founded upon and will be made by testimony of the said Federal narcotic officers,

Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, as aforesaid, who are prepared to and will testify in said State Court proceedings as aforesaid, and intend to and will use and offer in evidence the same identical contraband marihuana used and received in the Federal Court as evidence against petitioner.

XVI.

That the actions of the Federal narcotic officers as aforesaid in causing petitioner's arrest under said State charge by reason whereof petitioner is now confined and restrained of his liberty as aforesaid, have caused petitioner herein to be deprived of due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

XVII.

That the said Federal officers and each of them, as aforesaid, and the District Attorney of the County of Los Angeles and his deputies, well knew at the time of the issuance of said complaint as aforesaid that petitioner had been acquitted of the charges in the Federal Court, and that the case against petitioner would have to be made upon the testimony of said Jose Ramirez and the other Federal narcotic officers.

XVIII.

That the said officers as aforesaid have at all times since the finding of not guilty by the Federal Court of your petitioner as aforesaid, had knowl-

edge of the judgment of said Court that petitioner was not guilty of said Federal charges; however, in disregard of said acquittal of petitioner and in order to vex, harass and annoy him, and in violation of his constitutional rights under the Fifth and Fourteenth Amendments of the Constitution of the United States, the said officers, as aforesaid, and in particular the said Jose Ramirez, did unlawfully and illegally, in violation of [30] petitioner's constitutional rights, sign, swear to and cause the issuance of the aforementioned complaint, and by reason thereof did cause the arrest of petitioner and did cause him to be twice placed in jeopardy for the same identical and necessarily included offense in the Federal and State Courts as aforesaid.

XIX.

That the said contraband marihuana so received by said Federal officers and in their possession and control, as aforesaid, which contraband marihuana is intended to be used in the said prosecution in the State Court, is in contravention of the Fifth and Fourteenth Amendments of the Constitution of the United States and the statutes so made and provided.

XX.

That petitioner has no speedy or adequate remedy at law against the actions of said Federal officers, as aforesaid, and unless said officers are restrained and enjoined from testifying in said State Court concerning said matters and the use of said contraband marihuana, as aforesaid, said officers intend

to and will proceed to do so against petitioner herein, all in violation of his constitutional rights as aforesaid.

XXI.

That it is immediately necessary and appropriate, for which the law affords no speedy and adequate remedy, that this Court make such order in order that petitioner's rights as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States be preserved to him, which will be denied to him by the officers of the Federal Bureau of Narcotics, employees of the Government of the United States.

XXII.

That by reason of the foregoing petitioner is now and since the date of his arrest has been illegally and unlawfully detained and deprived of his liberty by reason and virtue of the acts and conduct [31] of the Federal narcotic officers as aforesaid.

Wherefore, petitioner prays:

(1) That said Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, and any other Federal officers who contemplate testifying, be enjoined and restrained by appropriate order of this Court from testifying in proceedings in the State Court entitled, "In the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California, the People of the State of California, Plaintiff, vs. Refugio Gonzalez Lozoya, Defendant, No. 133,389,"

or any other proceedings founded upon the said charge involving said contraband marihuana as alleged herein.

(2) That said Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller be by appropriate order of this Court directed to acquire, or reacquire, and take possession of and deliver to the Clerk of the United States District Court for the Southern District of California, Central Division, the contraband marihuana named in the indictment and complaint herein mentioned, being approximately nine and one-half pounds of marihuana, and that said contraband marihuana be ordered destroyed by order of this Court in conformity with the provisions of Section 2463 of Title 28, U.S.C., and for such other effective orders as may be appropriate under the circumstances and allegations of this petition, in order that petitioner be afforded due process and the equal protection of the laws, and that he be not deprived of his liberty without due process of law.

Dated this 2nd day of January, 1957.

REFUGIO GONZALEZ
LOZOYA,
Petitioner;

By /s/ DAVID C. MARCUS,
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed January 4, 1957. [32]

[Title of District Court and Cause.]

BRIEF BY RESPONDENTS IN OPPOSITION TO ORDER TO SHOW CAUSE

Comes Now respondents Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, by their counsel, Laughlin E. Waters, United States Attorney, by Joseph F. Bender, Assistant United States Attorney, and file their brief and points and authorities in opposition to the order to show cause why they should not be enjoined and restrained, as requested by Refugio Gonzalez Lozoya in his petition, dated January 2, 1957.

Respondents should not be enjoined for the following reasons:

(1) No constitutional right of Refugio Gonzalez Lozoya under the Fifth, Fourteenth or any Amendment of the Constitution of the United States has or will be violated by prosecution of petitioner in the state court and testimony therein by [52] respondents.

(2) The marihuana involved was not obtained by unlawful search and seizure from petitioner Refugio Gonzalez Lozoya.

(3) Prosecution and acquittal of petitioner Refugio Gonzalez Lozoya in the federal court for unlawful acquisition and transfer of marihuana does not constitute former jeopardy, to bar prosecution

of petitioner in the state court for possession of marihuana.

Dated: January 9, 1957.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney,
Attorneys for Respondents.

Respondents' Points and Authorities in Opposition to Order to Show Cause

Respondents make the following points and cite the following authorities in opposition to the petition of Refugio Gonzalez Lozoya to enjoin respondents:

I.

Respondents ask but one question of petitioner, viz.:

What rights of Refugio Gonzalez Lozoya would be violated if the court does not enjoin respondents? The answer is, No rights of petitioner would be violated because:

(a) The Fifth Amendment to the Constitution of the United States provides in part, "No person

shall be deprived of * * * property without due process of law * * *" Petitioner has never claimed ownership of the marihuana. He was lawfully arrested on a valid charge by the State of California, has had an adequate opportunity to retain and has retained counsel to prepare a defense and have a fair hearing before a court having jurisdiction, as required by the Fifth Amendment.

See: Powell v. Alabama, 287 U. S. 45.

(b) The Fourteenth Amendment requires due process and equal protection be accorded petitioner by the State of California. The Fourteenth Amendment requires the state to prosecute petitioner properly. No question of impropriety of the state proceedings is before the federal court. (The question of former jeopardy will be discussed later.)

(c) The Fourth Amendment is placed in issue by petitioner Lozoya who cites the Rea v. United States case as authority to enjoin respondents. The Rea case holds that where a federal narcotics agent unlawfully obtains evidence from defendant by unlawful search and seizure and "plans to use his illegal search [54] and seizure as the basis of testimony in the state court," the federal agent will be enjoined from testifying in the state trial. The rationale of the Rea case is simply that a federal agent who has violated the federal Rules governing searches and seizures cannot flout the rules "and use the fruits of his unlawful act either in federal or state proceedings."

If petitioner seriously contends that the Rea case is authority to now enjoin federal narcotics agents from testifying in the state court, why did he not assert the Rea case as authority to enjoin the same agents from testifying against him in the initial federal proceedings. In the Rea case the federal district court granted the motion of defendant to suppress the evidence before trial in the federal court. The evidence, the marihuana, had been illegally obtained from defendant by the federal narcotics agent by what constituted an unlawful search and seizure of the marihuana from defendant. In the instant Lozoya case there was no unlawful search or seizure by the agents. At no time has Lozoya claimed and proved, as he must, that the marihuana is his and that it was taken from his possession by unlawful search and seizure. Indeed, the antithesis was asserted by Lozoya during the federal trial; he contended it was not his marihuana.

The respondents, in the instant case, obtained the marihuana lawfully in the performance of their federal duties. They violated no constitutional right of petitioner to be secure against unlawful searches and seizures and should be permitted to testify as witnesses in the state court in the pending criminal proceeding in that forum against petitioner Lozoya for possession of the marihuana.

In the absence of allegation and proof that the marihuana involved was obtained by respondents unlawfully, the Rea case, if applicable, is authority

for denial of the petition to enjoin [55] respondents.

Rea v. United States,
350 U. S. 214, especially pages 217 and the top of page 218.

II.

Petitioner is not placed in double jeopardy by his trial and acquittal in the federal court and subsequent state prosection. In the federal prosecution, petitioner was tried on one count for unlawful acquisition of marihuana without having paid the federal tax; in the other count, he was charged with unlawful transfer of marihuana without payment of said tax. On the other hand, in the state proceedings, defendant Lozoya is charged with possession of marihuana.

(a) The test of double jeopardy is whether defendant has been put in jeopardy for the same offense, not whether he has been tried for the same act.

Poffenbarger v. United States
(C.C.A. Iowa), 20 F. 2d 42, 45.

(b) The constitutional guaranty against "double jeopardy" is against jeopardy for the same offense and not against repetition of evidence in trial for different offenses or against incidental proving of the same offense, if such offense is an offense which has not theretofore been charged and prosecuted.

United States v. Brimsdon
(D.C. Mo.), 23 F. Supp. 510, 512.

(c) Where the same act is an offense against both state and federal governments, its prosecution and

punishment by the latter after prosecution and punishment by the former, is not double jeopardy.

United States v. Lanza,
260 U. S. 377, and in particular pages 383, 384 and 385. [56]

The Lanza case, decided by the Supreme Court of the United States, involved a prior conviction in the state court and subsequent trial and conviction in the federal court. Although two punishments were imposed, one by each sovereign, the Supreme Court affirmed the conviction and found no double jeopardy. A fortiori, the moral equities in favor of petitioner Lozoya are less compelling as he was acquitted by the first forum, and could suffer imposition of but one punishment if convicted in the state proceedings.

The Lanza case involved a second prosecution for the identical offense involved in the state prosecution, i.e., unlawfully transporting and selling intoxicating liquors. In the Lozoya case, the offenses are not only crimes against separate sovereigns but are different crimes, i.e., acquisition and transfer, in the federal proceedings and mere possession in the state proceedings. Delacerda v. United States, 223 F. 2d 831.

(d) The jurisdiction of the federal courts over a prosecution against one charged with the unlawful possession of smoking opium is not exclusive.

United States v. Ah Hung,
243 Fed. 762.

III.

(a) Congress has conferred upon the Secretary of the Treasury the authority to destroy or deliver marihuana confiscated by and forfeited to the United States, to any department or agency of the government, including the Federal Narcotics Bureau.

26 U.S.C., 2598(d).

(b) Delivery of the marihuana from the Secretary of the Commissioner of Narcotics is provided in T.D. 28, order of the Secretary of the Treasury relating to the enforcement of the marihuana tax act of 1937. [57]

(c) Distinguish 28 U.S.C., 2463, as discussed in the Rea case. This section is entitled, "Property Taken Under Revenue Law Not Repleviable." All that Section 2463 refers to is the question of replevy (reacquisition) of the marihuana by the true owner who claims same. In the Rea case, the court discussed Federal Criminal Rule 41(e) which permits a District Court to suppress evidence obtained by unlawful searches and seizures.

The Rea case extended the rule and held that when "a federal agent has violated the federal rules governing searches and seizures * * *" the federal court may enjoin the federal officer from using "the fruits of his unlawful act" as "the basis of testimony in the state court." In the absence of acquisition of the marihuana by federal agents by unlawful search and seizure, the provisions of 26 U.S.C. 2598(d) apply and give the Secretary alone the power to destroy or deliver marihuana to the Nar-

cotics Bureau. The disposition of the marihuana thereafter is subject to the orders of the Secretary of the Treasury or his delegate as stated in (a) and (b), supra.

IV.

The marihuana involved was withdrawn from evidence by Assistant United States Attorney Joseph F. Bender in compliance with local Rule 20(a), in the same manner as all evidence is normally withdrawn from the custody of the Federal Clerk subsequent to final disposition of the case. By reason of the acquittal of petitioner, no further proceedings could be had against him on the federal indictment and removal of the exhibits (evidence) offered by the government was completely proper.

"* * * All * * * exhibits, * * * filed in any cause, shall, * * * be returned to the party or person to whom they belong, * * *"

Rule 20(a), Local Rules of the United States District Court [58] for the Southern District of California (first paragraph thereof).

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;
LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;
/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney,
Attorneys for Respondents.

[Endorsed]: Filed January 9, 1957. [59]

United States District Court, Southern District of California, Central Division

No. 25033—CD—Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

REFUGIO GONZALES LOZOYA,
Defendant.

ORDER RESTRAINING FEDERAL OFFICERS FROM TESTIFYING IN STATE CRIMINAL PROCEEDINGS

Application for an injunction having been duly made, and the Court finding that defendant Refugio Gonzales Lozoya, from the time of his first detection, and including his arrest, and interrogation and search and seizure of the subject of the offense consisting of nine and one-half pounds of marihuana, incarceration and interrogation, was in fact deprived of due process of law and of the American tradition of fair play that included beatings and torture by agents and employees of the United States Government, to wit: Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller; and good cause appearing,

It Is Hereby Ordered that said Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller are hereby permanently enjoined from testifying concerning the subject of said detection, apprehension, arrest, interrogation

and the search and seizure of said nine and one-half pounds of marihuana, and said parties, together with their agents, associates and any parties having the said nine and one-half pounds of marihuana are ordered to forthwith return and deposit the same with the Clerk of this Court Room, and all persons are restrained from ordering and [60] compelling the parties enjoined herein, from testifying in any proceeding.

Dated: This 10th day of January, 1957.

/s/ THURMOND CLARKE,
United States District Judge.

[Endorsed]: Filed January 10, 1957. [61]

[Title of District Court and Cause.]

MINUTES OF THE COURT, JAN. 10, 1957

Present: Hon. Thurmond Clarke, District Judge.
U. S. Att'y, by Ass't U. S. Att'y Joseph F. Bender.
Counsel for defendant: David C. Marcus.

Proceedings:

Hearing Petition of Deft. Refugio Gonzalez Lozoya, OSC, re: Restraining Federal Narcotic Officers From Testifying and Using Exhibit of Narcotic Drug in Action No. 133,389—People of State of Calif. vs. Lozoya on Jan. 11, 1957, in Division 4 of said Municipal Court.

Attorney Marcus makes statement in support of petition.

Attorney Bender makes statement in opposition.

The Court orders following order filed, a copy of which has been handed to each counsel, that Federal Narcotic Officers are hereby permanently enjoined from testifying concerning the subject of said detection, apprehension, arrest, interrogation, and the search and seizure of said nine and one-half pounds of marihuana, and said parties, together with their agents, associates, and any parties having the said nine and one-half pounds of marihuana are ordered to forthwith return and deposit the same with the Clerk of this Courtroom, and all persons are restrained from ordering and compelling the parties enjoined herein from testifying in any proceeding.

Court advises will file an opinion in the matter at a later date.

JOHN A. CHILDRESS,
Clerk;

By /s/ E. J. FISHER,
Deputy Clerk. [62]

[Title of District Court and Cause.]

RECEIPT FOR MONEY, EVIDENCE, OR OTHER PROPERTY

District No. 14.
Case No. Cal.—1105—M.
Date: January 11, 1957.

Case No. 25033—Crim. U. S. A. vs. Refugio Gonzalez Lozoya.

To: Howard W. Chappell, Narcotic Agent.

Receipt is hereby acknowledged of the following-described money, evidence, or other property, which was given into my custody by the above-named narcotic officer.

Number of Items: 1.

Description of Items: Exhibit No. 1 consisting of ten paper sacks containing marihuana enclosed in burlap bag weighing approximately 9½ pounds, turned over to Clerk of Court.

Under "Description of items" show whether box, can, bottle, etc.; under "Quantity of drug or amount of money" the number of grains, ounces, or amount of money as shown on outside of package or envelope.

Custodians will not receive packages of evidence, money, or drugs not properly sealed, initialed, and dated.

JOHN A. CHILDRESS,
Clerk;

By /s/ E. J. FISHER,
Deputy Clerk.

[Endorsed]: Filed January 11, 1957. [63]

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Jose Ramirez by handing to and leaving a true and correct copy thereof with him, personally, at Room 1755, Federal Building, at Los Angeles, Calif., in the said District at 12:45 p.m., on the 7th day of January, 1957.

/s/ R. W. WARE,
United States Marshal;

By /s/ JOHN E. SEARS,
Deputy.

Marshal's fees: $2.00.
Mileage: $2.00. [47]

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Meyer Goodman by handing to and leaving a true and correct copy thereof with him, personally at Room 1755, Federal Bldg., at Los Angeles, Calif.,

in the said District at 12:45 p.m., on the 7th day of January, 1957.

/s/ R. W. WARE,
United States Marshal;

By /s/ JOHN E. SEARS,
Deputy.

Marshal's fees: $2.00.
Mileage: $2.00. [48]

[Title of District Court and Cause.]

RETURN ON NON-SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I received the annexed Order to Show Cause on 1-8, 1957, and returned same not served as to Michael Gullon, Fed. Bldg., on 1-11, 1957.

Reason: Out of town. Time's expired.

ROBERT W. WARE,
United States Marshal;

By /s/ JOHN E. SEARS,
Deputy. [49]

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Order to Show Cause on the therein-named Bill H. Freeman by handing to and leaving a true and correct copy thereof with him, personally at Room 1755, Fed. Bldg., at Los Angeles, Calif., in the said District at 4:30 p.m., on the 7th day of January, 1957.

/s/ R. W. WARE,
United States Marshal;

By /s/ JOHN E. SEARS,
Deputy.

Marshal's fees: $2.00.
Mileage: $2.00. [50]

[Title of District Court and Cause.]

RETURN ON NON-SERVICE OF WRIT

United States of America,
Southern District of California—ss.

I hereby certify and return that I received the annexed Order to Show Cause on 1-8, 1957, and returned same not served as to Robert E. Miller on 1-11, 1957.

Reason: Unable to serve; out of town; time expired.

ROBERT W. WARE,
United States Marshal;

By /s/ JOHN E. SEARS,
Deputy. [51]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(b)

Notice Is Hereby Given that Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, respondents, in the proceedings to enjoin which was filed in the captioned action by petitioner Refugio Gonzalez Lozoya, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the "Order Restraining Federal Officers From Testifying in State Criminal Proceedings" which order enjoining respondents was entered in this action on January 10, 1957.

Dated: January 11, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney,
Attorneys for Respondents.

[Endorsed]: Filed January 11, 1957. [68]

[Title of District Court and Cause.]

MOTION TO SUSPEND ORDER OR INJUNCTION PENDING APPEAL

Come Now the respondents, Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, and move the above-entitled court to suspend the "Order Restraining Federal Officers From Testifying in State Criminal Proceedings," which injunction was ordered by the Honorable Thurmond Clarke on January 10, 1957, pending the appeal thereof, for the following reasons:

I.

To prevent irreparable injury to respondents by denial to them of due process of law under the Fifth Amendment of the Federal Constitution, and their right of free speech and to express themselves as guaranteed by the First Amendment, and by subjecting them to possible punishment by fine or imprisonment, or both, for failure to obey the process and lawful order of the Los Angeles Municipal Court. [69]

II.

Respondents have filed their notice of appeal of said order or injunction.

Serious questions have been posed by the grant of said order, viz.:

(a) Does a District Judge have jurisdiction in a criminal case, subsequent to acquittal of defendant, to issue an injunction?

(b) Can a Judge of the District Court, subsequent to the withdrawal of marihuana from evidence, order a federal narcotics agent to turn over said marihuana to the Clerk of his Court with no showing that said marihuana was unlawfully obtained by said agent?

(c) Can a Judge of the District Court enjoin federal narcotics agents from testifying in State Court proceedings, with no showing that the evidence to be given by them was unlawfully secured?

(d) Can the Federal Court enjoin the State Court without notice to that court or to the prosecuting officials of the State?

(e) Can the District Court make a finding of fact concerning allegations of beatings and torture without the taking of any evidence thereof?

Dated this 11th day of January, 1957.

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney,
Attorneys for Respondents.

Points and Authorities in Support of Motion

I.

The Court may suspend an injunction during the pendency of an appeal upon such terms as it considers proper.

Rule 62(c) of Federal Rules of Civil Procedure;

Lineker v. Dillon
(D.C. Calif., 1921), 275 Fed. 460, 470.

II.

When an appeal is taken by an officer or agency of the United States, no bond shall be required.

Rule 62(e) of Federal Rules of Civil Procedure.

III.

When "a federal agent has violated the Federal Rules governing searches and seizures * * *" the Federal Court may enjoin the federal officer from using "the fruits of his unlawful act" as "the basis of testimony in the State Court * * *"

Rea v. United States,
350 U. S. 214.

In the instant Lozoya matter, petitioner has never claimed that the marihuana was obtained from him unlawfully.

IV.

Where the same act is an offense against both State and Federal Governments, its prosecution and

punishment by the latter after prosecution and punishment by the former is not double jeopardy.

United States v. Lanza,
260 U. S. 377, and in particular pp. 383, 384 and 385.

V.

The issue of double jeopardy cannot be pleaded or raised by the defendant until the appropriate time in the State proceedings.

In re Lozoya, 146 A.C.A. 760.

[Endorsed]: Filed January 11, 1957. [71]

[Title of District Court and Cause.]

AFFIDAVIT OF JOSEPH F. BENDER

United States of America,
Southern District of California—ss.

Joseph F. Bender, being first duly sworn, states:

That affiant is an Assistant United States Attorney.

That affiant appeared as one of the counsel for respondents at the hearing on order to show cause in the captioned action, before the Honorable Thurmond Clarke on January 10, 1957.

That the only written documents or evidence presented to the court at said hearing consisted of the

Order to Show Cause, the Petition of Refugio Gonzalez Lozoya, and Points and Authorities, filed in said proceeding January 4, 1957, and the Brief and Points and Authorities of respondents, filed January 7, 1957.

That no other evidence by affidavit or testimony was offered [72] or received at said hearing.

That no evidence of alleged beatings or torture by respondents or anyone, was offered or received in said hearing.

Further affiant sayeth not.

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney.

Subscribed and sworn to before me this 11th day of January, 1957.

/s/ JOHN A. CHILDRESS,
Clerk, U. S. District Court for the Southern District of California.

[Endorsed]: Filed January 11, 1957. [73]

In the United States District Court, Southern District of California, Central Division

No. 25033 Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REFUGIO GONZALES LOZOYA,

Defendant.

Honorable Thurmond Clarke, Judge Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Tuesday, July 17, 1956—9:30 A.M.

Appearances:

For the Plaintiff:
LAUGHLIN E. WATERS,
United States Attorney; by
JOSEPH F. BENDER,
Assistant United States Attorney.

For the Defendant:
DAVID MARCUS, ESQ.

The Court: The Lozoya case.

Mr. Marcus, are you going to waive jury or have a jury trial?

Mr. Marcus: At the moment, your Honor, it is a jury trial. May I have a moment to talk to the defendant?

The Court: Well, we are ready to proceed.

Mrs. Bulgreen, I think in your case we can let the jurors go into Judge Hall's court and transfer the case in there.

And, Mr. Bender, we will hold your case while Mr. Marcus talks to the defendant. Is that satisfactory?

Mr. Bender: That is perfectly satisfactory.

The Court: We are going to take a chance and send the jury over there. We may have to bring you back. I was looking at Mr. Marcus over there. He wants to talk to his client. Anyway, we will send the jury over to Judge Hall's court on Mrs. Bulgreen's case. But we may have to bring you back. The jury may go over there now and the defendant may go over there now with her counsel.

(A recess.)

The Court: All right, we have the waiver. You may call your first witness. Go ahead. [3*]

Mr. Bender: Your Honor, I am advised that the Government's exhibit, the marijuana, was mailed yesterday and hasn't arrived yet.

The Court: We can go ahead without it and we will get it this afternoon or maybe tomorrow morning, if necessary.

Mr. Bender: The Government is inclined to waive its opening statement. Has the court read the trial memorandum?

The Court: Yes.

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

Mr. Bender: Well, that will certainly cover the matter.

Mr. Marcus: May I ask the court to invoke the rule, your Honor please, to exclude the witnesses?

The Court: He would like to have the witnesses——

Mr. Bender: Sequestered?

The Court: Yes.

How many do you have here?

Mr. Bender: We have only one witness here at the present time.

The Court: Only one here. I will ask Mr. Bender when they come in to have them remain in Judge Hall's court so that he can find them. So we will know where they are.

Mr. Bender: All right. That applies, then, to the defendant's witnesses?

The Court: Well, if you want to invoke the rule as to them, too, certainly.

Mr. Bender: Certainly. It is a two-way street. [4]

The Court: All right.

All those who are going to testify, have them remain in the next court here, in Department 1, right alongside us, so that we can find them if we want them. Just those who are going to testify.

(Whereupon persons leave the courtroom.)

The Court: All right.

Mr. Bender: Your Honor, the Government requests that Mr. Fisher, the clerk, mark this Government's Exhibit No. 2, the stipulation of facts and order thereon for identification only.

Have you seen this?

Mr. Marcus: The one I signed?

Mr. Bender: At this time, the Government offers as Government's Exhibit 2, a stipulation of facts and proposed order thereon, and requests that the court, on page 2 of the stipulation, approve the stipulation of facts, in accordance with, as the court knows the Federal Rules requiring approval of the stipulation before it can be filed.

The Court: All right.

Mr. Marcus: Mr. Bender, I believe, in view of your statement to the court that the exhibit referred to in the stipulation having not arrived yet, that it would be inopportune at this moment to have the court approve the stipulation. I think, in view of the fact that the exhibit is not here—— [5]

The Court: We don't have to approve it until the exhibit gets here.

Mr. Marcus: That is it.

The Court: It will probably come in the mail today, because you are prepared for trial today.

Mr. Bender: Yes.

Your Honor, if I may point out, subparagraph B of the stipulation, the scope of the stipulation is only that this stipulation is as to the qualifications of the chemist, that he is an expert witness; that he would testify that, in his opinion, it was marijuana; and that this Exhibit 1 would be identified by a number. Certainly all you stipulate to is that he would be identified. If it is not produced, it can't be identified.

Mr. Marcus: The analysis made by R. F. Love,

reveals that said Exhibit 1 for identification consists of approximately nine and a half pounds of marijuana. But there is no exhibit yet. How could we, in conformance with good practice, present the stipulation to the court where there is no exhibit?

The Court: In other words, you want to wait until the exhibit gets here?

Mr. Marcus: That's right, your Honor. Suppose something happens to the exhibit. I have never seen it.

The Court: Well, we can wait until it gets here.

Mr. Bender: Has it been received in evidence, your Honor, [6] or are you waiting to receive it into evidence?

The Court: Why don't we mark it for identification?

Mr. Bender: That has been done.

The Court: In view of Mr. Marcus' statement.

Mr. Bender: I observe, your Honor, that the wife has returned to the courtroom. Is she going to testify?

Mr. Marcus: She may testify.

I want you to wait next door.

The Court: Yes, if you would listen. Just go next door.

We told her to wait in Department 1. We couldn't let her testify if she stayed in here.

Mr. Bender: The Government calls Jose Joe Ramirez as its first witness, your Honor.

JOSE RAMIREZ

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Jose Ramirez.

Direct Examination

By Mr. Bender:

Q. Mr. Ramirez, you are a college graduate, are you not? A. Yes, sir.

Mr. Marcus: It is immaterial whether he is a college graduate or not, your Honor.

The Court: Well, I think he wants to give his background [7] of education.

Q. (By Mr. Bender): What is your profession or your occupation?

A. I am a Narcotics Agent attached to the Bureau of Narcotics, Treasury Department.

Q. For how long have you been connected with the Narcotics Bureau?

A. Since March of 1952.

Q. In what capacity were you connected or concerned with them at that time?

A. At that time I was employed as an agent trainee until——

Q. Did you subsequently become a full-fledged Federal Narcotics Agent? A. Yes.

Q. When? A. August 1, 1954.

Q. Have you been so employed and engaged since that time to the present? A. I have.

(Testimony of Jose Ramirez.)

Q. Directing your attention now to on or about May 17, 1956, what, if anything, occurred at that time with reference to this case?

Mr. Marcus: I object to that as being too broad. It is not directed to any particular incident or [8] event.

Mr. Bender: All right, your Honor, I can be more specific. I thought I was saving time.

The Court: All right.

Q. (By Mr. Bender): Directing your attention to approximately 7:00 o'clock in the evening of May 17, 1956, in the vicinity of Beverly Ranch Market in Montebello, California, and specifically to, I believe, in the vicinity of the intersection of Beverly and Poplar Streets, were you present there at that time, at approximately that time?

Mr. Marcus: Just a moment. That is objected to as being leading and suggestive, your Honor. It is compound. He has three parts to that question: the time and the place and he is assuming these facts at this time, your Honor.

The Court: Well, no, I'll overrule the objection. I think it is compound, but it might save time. We will split them up in the next series you have, Mr. Bender.

Mr. Marcus: I didn't want to rush this too fast.

The Court: All right.

Q. (By Mr. Bender): Mr. Ramirez, have you been to the Beverly Ranch Market in Montebello?

A. I have.

Q. When? A. On May 17, 1956.

(Testimony of Jose Ramirez.)

Q. At approximately what time?

A. At approximately 7:00 p.m. [9]

Q. What did you do on arrival at this time and place?

A. Upon arrival I parked the official government vehicle in the parking lot which is behind the Beverly Ranch Market.

Q. Did you remain there or did you leave within the next half hour?

A. I remained there until approximately 7:30.

Q. Well, what occurred at approximately 7:30, if anything?

A. At approximately 7:30, a cream-colored Chevrolet entered the parking lot, parked in front of my government vehicle. I walked to the car and spoke to the defendant Lozoya.

Q. What approximate year was this Chevrolet?

A. It was approximately a 1941.

Q. Was it a sedan or coupe, or do you recall?

A. It was a sedan.

Q. Was anyone in the automobile?

A. Yes, sir; the special employee of the Federal Government was there.

Q. And who else?

A. And myself and the defendant Lozoya.

Mr. Marcus: With the court's permission, may the reporter go back a couple of questions? I didn't get the answer of the witness. [10]

The Court: All right.

Mr. Bender: I will be glad to rephrase the question.

(Testimony of Jose Ramirez.)

Mr. Marcus No; it isn't for that purpose. I just didn't hear it.

The Reporter: Which part, Mr. Marcus?

Mr. Marcus: About three questions back.

(Whereupon the reporter read the record as follows:)

"Q. Did you remain there or did you leave within the next half hour?

"A. I remained there until approximately 7:30.

"Q. Well, what occurred at approximately 7:30, if anything?

"A. At approximately 7:30, a cream-colored Chevrolet entered the parking lot, parked in front of my government vehicle. I walked to the car and spoke to the defendant Lozoya.

"Q. What approximate year was this Chevrolet?

"A. It was approximately a 1941.

"Q. Was it a sedan or coupe, or do you recall?

"A. It was a sedan.

"Q. Was anyone in the automobile?

"A. Yes, sir; the special employee of the Federal Government was there."

Mr. Marcus: That's the part I wanted. "Employee" was the word?

The Reporter: "Special employee." [11]

Mr. Marcus: Special employee.

Q. (By Mr. Bender:) Mr. Ramirez, did you say "special employee"? A. Yes, sir.

Q. What occurred at this time?

A. I walked to the driver's side of the mentioned

(Testimony of Jose Ramirez.)

vehicle and spoke to the defendant Lozoya. I asked him if he had something for me, and he said "Yes."

I asked him, "How much do you have?"

And he said, "Ten pounds."

I asked him, "How much will it cost me?"

And he said, "$10 a pound"—pardon me—"$60 a pound."

I asked him, "Is the marijuana good?"

And he said, "Yes." He said, "There is no beef about my stuff."

I then asked him if he could give me a cut, and he said no, he couldn't do it this time because he had to have so much to pay when he crossed the border with it.

I then asked him, "If you give me a cut, I will be your steady customer from now on."

And he said, "Well, I can't do it this time. Maybe next time."

And I said, "Well, how much will you let me have it for? $50 a pound?"

He said, "No; 53." [12]

I said, "Well, that's all right. Let's see the stuff, if it is good."

Q. Did you say the 53 was for the ten pounds?

A. Well, that was for the future transactions, yes.

Q. How much did you discuss as price for the present transaction? A. $60 a pound.

And he said, "Wait a minute," and he looked around the area a few minutes, and then I said,

Testimony of Jose Ramirez.)

'Well, let's get it, because I want to see if it's ood."

So the defendant backed the car adjacent to mine, hich would leave a space of about four feet. He en walked to the rear of his vehicle and asked me here I wanted it. I said, "In the trunk of my car." then walked over and unlocked my trunk, and he pened his trunk and removed from the trunk of his ehicle a burlap sack, which he placed in the trunk f my automobile.

I then closed the door, the trunk lid on my car and as in the act of paying the defendant some money hen the other agents arrived and placed him under rrest.

Mr. Marcus: May that portion of his testimony, at, "I was in the act of paying him some money" e striken as being a conclusion of the witness, your onor?

The Court: All right, it may go out

Q. (By Mr. Bender): What were you doing at e time the [13] defendant was arrested?

A. I had my money in the left hand and I had few bills extracted with my right.

Q. Would you describe the position of your nds?

A. Yes. I was going to go like that (indicating). had my hand out, with the other——

Q. With the bills in it? A. Yes.

Q. Which hand?

A. I had it in my right, and when the agents rived——

(Testimony of Jose Ramirez.)

Q. To whom were you directing your right hand? A. To the defendant Lozoya.

Q. Was it pointed toward him? A. Yes.

Q. Apporximately how far were you from him at this time?

A. About as close as this gentleman is here (indicating), closer perhaps.

Q. The court reporter?

A. Perhaps—yes, closer; we were right next to each other.

Q. Pardon me.

A. We were right next to each other.

Q. At this time you say it was about 7:30 in the evening? A. Yes, sir. [14]

Q. Was it daylight or dark?

A. No; it was daylight.

Q. Do you recall about what time it got dark that evening, May 17th?

A. No; I don't recall the exact time, but it must have been a little after 8:00, or 8:00 o'clock.

Q. This 1941 Chevrolet that you testified that the defendant and another individual were in, who was driving the 1941 Chevrolet when it came into the Beverly Ranch Market?

A. Defendant Lozoya was driving the car.

Q. Where was this other individual seated in the car?

A. He was seated in the front passenger side.

Q. Where was the 1941 Chevrolet automobile when you first saw it?

A. When I first observed this car, it was travel-

(Testimony of Jose Ramirez.)

ing east on Beverly. I just caught a glimpse of it just before he stopped for the red light.

Q. And then did it go out of your view for a moment? A. Yes; it did.

Q. What obstructed your view of it? What came between you and the car?

A. The building, the market building.

Q. When and where did you next see it?

A. Well, a few moments later I observed it on Poplar, just before he turned into the market parking lot. [15]

Q. Then the entrance they turned in onto the market was off Poplar Street; is that correct?

A. Yes.

Q. Where was the car driven, this 1941 Chevrolet, as it turned in?

A. It was driven into the lot directly in front of my vehicle.

Q. What occurred then?

A. That is when we held the conversation.

Q. Did the 1941 Chevrolet—was it stopped at approximately in front of your vehicle?

A. Yes.

Q. Approximately how long did you engage in this conversation with the two individuals?

A. For approximately five minutes, I would say.

Q. Did anything happen to the 1941 Chevrolet? Was it moved or anything of that nature after or during the conversation?

A. Well, after the conversation he backed it adjacent to mine.

(Testimony of Jose Ramirez.)

Q. How close?

A. Approximately four feet.

Q. You mean he parked it parallel to yours?

A. Yes.

Q. And was that before the removal of the burlap sack [16] from the trunk of his car?

A. It was.

Q. Directing your attention back momentarily to approximately 7:00 o'clock, or a little after 7:00, were there any covering agents in the vicinity that you observed?

A. Yes, sir. I observed all agents. They were approximately——

Q. Whom did you observe?

A. I observed Agent Gullen and Agent Frias—pardon me—Agent Freeman, who were standing on the sidewalk beside the Beverly Ranch Market, a distance of approximately 50 feet. I saw Agent Goodman, Agent Cantu, and Agent Miller, directly across the street in the lot of a service station.

Q. That was Goodman, Cantu and Miller?

A. Yes, sir.

Q. After the defendant placed this burlap sack into the trunk of the car, did you make any other gesture or anything other than and in addition to the payment of the money or the attempted payment of the money?

A. Yes, sir. Immediately upon the defendant placing the burlap sack in the trunk of the government vehicle, I hurriedly tore one of the paper

(Testimony of Jose Ramirez.)

sacks open and I observed it was a green leafy substance resembling marijuana.

I then gave the prearranged signal, which was the dropping of a banana which I had been eating. I dropped it [17] on the floor, and that was the prearranged signal that the evidence had been delivered and that I thought it was marijuana.

Mr. Marcus: Just a moment. I move that that last portion be stricken, your Honor, as being a conclusion of this witness.

Mr. Bender: The portion after where, counsel?

Mr. Marcus: "I dropped the banana."

The Court: That part may go out, just that part.

Mr. Bender: It is my understanding, your Honor, that the testimony "I dropped the banana" has remained in, but it is the subsequent testimony that has been stricken.

The Court: That's right.

Q. (By Mr. Bender): Who was present at the time of the arrest of the defendant? Name all of the individuals who were present?

A. Yes, sir. Agent Gullen and Agent Freeman, Agent Goodman, Agent Cantu, and Agent Miller, and the special employee.

Q. And yourself?

A. And myself; yes, sir.

Q. And the defendant? A. Yes.

Mr. Marcus: I submit that that does not answer the question. He was asked to name all persons present. [18]

Mr. Bender: All right, I'll withdraw the question.

(Testimony of Jose Ramirez.)

The Court: All right.

Q. (By Mr. Bender): And I will ask you to state what persons were present at the arrest of the defendant?

Mr. Marcus: Well, he has answered part of it.

Mr. Bender: Yes.

Mr. Marcus: I think he should be required to answer the rest of it now, and not be permitted to withdraw the question after he has answered part of it.

Mr. Bender: Counsel, that is an unusual rule of law.

The Court: I will let it remain.

Q. (By Mr. Bender): Was there any conversation—did anyone say anything in the presence of the defendant at or immediately subsequent to his being placed under arrest? A. Yes, sir.

Q. What was said? What was stated in his presence and by whom?

A. Agent Goodman; upon arriving, he asked the defendant where had he obtained the burlap sack that he placed in my government vehicle.

Q. What did the defendant say?

A. The defendant said, "What sack? I didn't put any sack over there," or words to that effect.

Agent Goodman then said, "Well, we just saw you put a sack in there." [19]

Q. Up to this time had you advised or told the defendant that you were a Federal Narcotics Agent?

A. No; I did not.

Q. When was it that you first advised the de-

(Testimony of Jose Ramirez.)

fendant that you are a Federal Narcotics Agent—what date?

A. I advised the defendant Lozoya on May 24th, when I made a marijuana demand order form.

Q. Where did you make this demand?

A. At the county jail.

Q. At approximately what time? Morning or afternoon?

A. I believe it was close to noon. I am not positive.

Q. Who was present besides yourself and the defendant, if anyone, when you made this demand?

A. I believe it was Agent Freeman.

Q. What did you say to the defendant, if you recall?

A. I said, "Hello, Lozoya." And he didn't answer. I took out my badge and commission and I said, "This is to notify you that I am a Federal Narcotics Agent, and it is my duty to make certain demands on you." I then made a demand, advised him that every person who handles or transfers marijuana has to produce an official government form.

Q. Did he produce the form? A. No, sir.

Q. Did he say that he had it?

A. Yes; at first he said he had it, and then I said, [20] "Well, within eight days you have to show a copy of this in the office of the Federal Bureau of Narcotics, Room 1755." He then said that he had no form.

(Testimony of Jose Ramirez.)

The Court: We'll stop and take the morning recess at this time of about ten minutes.

(Recess.)

The Court: Go ahead. Do you want the last question, Mr. Bender?

Mr. Bender: Yes, your Honor.

The Court: All right.

(The reporter read the record as follows:)

"Q. Did he produce the form?

"A. No, sir.

"Q. Did he say that he had it?

"A. Yes; at first he said he had it, and then I said, "Well, within eight days you have to show a copy of this in the office of the Federal Bureau of Narcotics, Room 1755. He then said that he had no form."

Q. (By Mr. Bender:) Mr. Ramirez, approximately where were you standing just before the other agents came up and made the arrest?

A. The vehicles were facing north. I was standing approximately on the left rear quarter panel which would be right beside the left rear fender. The defendant was standing—— [21]

Q. Of which car?

A. Of the government vehicle. We were between the two cars. The defendant was facing me at an approximate distance of two or three feet.

Q. He was facing in which direction then?

(Testimony of Jose Ramirez.)

A. He was facing south, and I was facing north.

Q. Which direction did the arresting officers approach from?

A. They approached from the north, walking toward us, walking south.

Q. In other words, they approached from behind the defendant? A. Yes, sir.

Q. After the defendant was placed under arrest, did you accompany the defendant anywhere?

A. No. I was conveyed in a separate automobile with Agent Goodman to the Bureau of Narcotics office.

Mr. Marcus: I'm not hearing any of these answers at all, your Honor. He speaks too low.

The Court: Speak a little louder, please, Mr. Ramirez.

The Witness: I was conveyed to the Bureau of Narcotics office by Agent Goodman.

Q. (By Mr. Bender): At the Bureau of Narcotics office, were you placed in any interrogation room or other room with the defendant? [22]

A. Yes; I was placed in the same room with the defendant.

Q. At this time had you told him you were a Federal Narcotics Agent? A. No; I had not.

Q. Had anyone told him this in your presence?

A. No.

Q. What occurred in this room at the Federal Narcotics interrogation room?

A. I was placed in the same room with the defendant. I made an attempt to talk to him. He said,

(Testimony of Jose Ramirez.)

"Sh-h," and put his finger up to his lips and he pointed up at the fan on the wall. He then refused to say anything else.

Q. He then said nothing?

A. He then said nothing further.

Q. What did you do with the contents and this burlap sack that, as you testified, was placed in the trunk of the government car by the defendant? What did you do with it?

A. I weighed and initialed that evidence, and it was mailed to the ATU chemist in San Francisco, on May 18th.

Q. Did you mail it? A. Yes, sir.

Q. You referred to this other man as a "special employee." By that did you mean he was paid any money?

Mr. Marcus: Just a moment. That calls for a conclusion [23] of the witness. He has already given his answer. What he means is a question for cross-examination.

The Court: I'll overrule the objection. You may answer.

The Witness: We refer to anyone who assists our Bureau in any capacity as a special employee.

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Marcus:

Q. Who employed him?

A. Well, I guess our Bureau, our office did.

(Testimony of Jose Ramirez.)

Q. Well, did you employ him?

A. Well, he was assisting me, yes.

Q. My question was, did you employ him?

A. I don't believe I understand the word "employ."

Q. You said he was a "special employee." Now my question is, did you employ him?

A. He was assisting our Bureau, yes. He was——

Q. That isn't my question.

A. He was assisting me in this case.

Q. I didn't ask you whether he was assisting you. I asked you if you hired him, if you employed him?

A. I'm afraid I will have to have a definition of the word "hired."

Q. Well, that's very simple. You are a [24] college graduate. Tell me what you mean by the word "hire"?

A. By "hire" I mean someone who comes in and perhaps signs contracts to do a certain job, I suppose, at which time he will be guaranteed a certain sum upon completion of his job.

Q. Well, you told the Judge a while ago, when your attorney asked the question here—the Government asked you the question, and you said that he was a special employee of the Federal Government.

A. Yes, sir, and I——

Q. Just a minute, please. Did you say that?

A. Yes, sir.

(Testimony of Jose Ramirez.)

Q. Now my question is who employed him as a special employee of the Federal Government?

A. I presume I did.

Q. Well, let's not presume. I want you to tell the court if you hired him.

A. I'm afarid I don't know how to answer that question.

Q. Well, that is very simple. Do you know a man by the name of Johnny Villas?

A. Yes; I do.

Q. How long have you known him?

A. I don't recall. Approximately six to eight months, I would say.

Q. Where did you first meet him? [25]

A. I met him in—I believe it is West Whittier.

Mr. Bender: The Government objects to the question as being irrelevant and immaterial, your Honor.

Mr. Marcus: I am going to tie it up. I can't ask all the questions at one time.

The Court: I'll overrule the objection.

Mr. Bender: Further, the identity of the informer is confidential matter.

Mr. Marcus: I didn't ask him the identity. I know who he is.

The Court: All right. You may proceed.

Q. (By Mr. Bender): You say you met him at Whittier?

A. I believe it is West Whittier, yes.

Q. In West Whittier. And at that time you were an officer, weren't you? A. Yes, sir.

(Testimony of Jose Ramirez.)

Q. You know that Johnny Villas lives in West Whittier, don't you?

A. No; I do not know where he lives now. I believe at the time he was living in this area I refer to as West Whittier.

Q. You knew he was living in West Whittier at the time you met him, you say about six months ago; is that right?

A. I really don't know. It was about eight months.

Q. Eight months ago. Now, the question is, [26] did you know where he lived at that time?

A. Eight months ago?

Q. Yes, sir.

A. Subsequently I found out where he lived, yes.

Q. You have been to his home, haven't you?

A. Yes.

Q. Let's answer the questions directly, Mr. Ramirez, will you?

Mr. Bender: Counsel, I submit that he answered "Yes." How much more direct can you answer the question?

Mr. Marcus: I have asked him three times now where he lived.

Q. You knew his home, didn't you?

A. Yes.

Q. You have been there to his home?

A. Which period are you talking about?

Q. At any time.

A. When I first met him, yes.

(Testimony of Jose Ramirez.)

Q. And he lived in West Whittier, didn't he?

A. I believe it is West Whittier.

Q. Well, where did you go when you went out there to see him at his home? Did you go to West Whittier?

A. I believe that area where he lives is West Whittier. However, I haven't checked my records, because I said it is West Whittier or Whittier. [27]

Q. To what address did you go when you went out there to see him?

A. 5800 on Bonita Street.

Q. 5800? West Whittier, isn't it?

A. I believe so.

Q. I didn't ask you if you checked your records. I asked you where he lived. You went on 5800 West Whittier, or Bonita Street, didn't you?

A. Yes; I went to 5800 Bonita.

Q. I want you to be frank with me in these answers, please, and if you don't know them to answer them directly. You knew Johnny Villas as a narcotic peddler, didn't you? A. Yes.

Q. Now, you arrested Johnny Villas, didn't you?

A. Yes.

Q. You knew he had been engaged in peddling marijuana prior to the time you met him eight months ago, you say, didn't you?

A. Not prior to that.

Q. Well, at least on that date? A. Yes.

Q. And you placed him under arrest and filed charges against Johnny Villas, didn't you?

A. Yes.

(Testimony of Jose Ramirez.)

Q. And you prosecuted or assisted in the [28] prosecution of Johnny Villas, didn't you?

A. No, sir. He plead guilty.

Q. Well, you came to court, didn't you?

A. Yes, sir.

Q. You were in court at the time the hearing was conducted, weren't you?

A. I don't believe I was in the courtroom when he pleaded guilty.

Q. You are not sure of it, are you?

A. No.

Q. Do you remember a boy by the name of Moreno was invloved in that deal, too?

A. Yes.

Q. Do you remember that I was attorney of record and appeared in court for Moreno at the time you were there? A. Yes.

Q. Now you remember being in court, don't you?

A. Yes.

Q. You knew that Mr. Moreno's reputation at the time was a marijuana peddler in West Whittier, didn't you?

A. West Whittier and another area in the San Gabriel Valley.

Q. In the San Gabriel Valley? A. Yes.

Q. You knew there was a trial involving this boy Moreno [29] that I represented, didn't you?

A. Yes.

Q. There was a trial before Judge Carter?

A. Yes.

Q. And isn't it a fact that you were talking to Mr. Villas during the period of his prosecution on

(Testimony of Jose Ramirez.)

that case, during the time that the case was pending before Judge Carter? A. No, sir.

Q. You didn't see him in court at all?

A. Johnny Villas? No, sir.

Q. Johnny Villas. Didn't you see him in court at the time he entered a plea to the judge?

A. No, sir. As I stated, I don't believe I was here when he entered a plea. I don't believe I was in the courtroom.

Q. Do you remember the case being continued on two or three occasions? A. Yes.

Q. And you were in court during those occasions, weren't you?

A. No, sir, I don't believe I was.

Q. Are you sure, or just don't remember?

A. I don't recall.

Q. Now, you knew that Villas had been convicted on previous occasions in matters involving marijuana, didn't you? [30]

A. No, sir.

Q. You had his record at the time in the courtroom, didn't you? A. Yes, sir.

Q. And the record you had at that time disclosed that he had been convicted of the possession of marijuana on the prior occasion?

A. No, sir, I don't believe he was ever convicted prior to the case.

Q. Can you get your records, sir, to refresh your memory later on in the day with respect to Johnny Villas, an employee of the Federal Government?

Mr. Bender: The Government objects to this

(Testimony of Jose Ramirez.)

line of questioning on the grounds that it is totally irrelevant and immaterial, your Honor.

The Court: I'll sustain the objection.

Mr. Marcus: I'm going to show the bias, the prejudice, the interest of Johnny Villas and connect him up with it. I haven't asked the connecting question yet, but I propose to show who Johnny Villas is.

Mr. Bender: The Government submits that if that were true and Johnny Villas were in on the transaction, that wouldn't affect this.

Mr. Marcus: That would go to the credibility of this witness. [31]

The Court: As to his record, I will sustain the objection.

Mr. Marcus: Very well, your Honor.

Q. How long prior to May 17th had you seen Johnny Villas?

A. I would say approximately two weeks.

Q. Had you seen him during the period of the two weeks? A. Yes, sir.

Q. Had you talked to him during the period of the two weeks? A. Yes, sir.

Q. How often during that two weeks' period had you talked to him?

A. I believe I talked to him over the telephone about two times, and I saw him personally once.

Q. Did you tell Johnny Villas that he would have to help because Judge Carter had granted him straight probation?

(Testimony of Jose Ramirez.)

A. No, I did not. I didn't know he had granted him probation.

Q. Do I understand, sir, that you are telling this court you didn't know Johnny Villas was on probation at the time?

A. No, sir, I don't believe so.

Q. And that was the case in which you were involved and had made an arrest on, and you don't know what disposition [32] was made of that case?

A. As to the defendant John Villas, no.

Q. You had made an arrest on it, hadn't you?

A. Yes.

Q. And you had appeared in court on several occasions concerning that case? A. Yes.

Q. And you didn't know what disposition was made of it?

A. I do not know whether disposition was made prior or after.

Q. Prior or after what?

A. This present case you are talking about.

Q. Prior or after this, a case of the arrest of this defendant Lozoya?

A. What I am trying to say is, I do not recall when he was sentenced. I would have to check my records.

Q. Mr. Ramirez, do I understand you to state under oath now that you don't know what disposition was made of the Villas case at the time you talked to him some two weeks before May 17th? Do I understand that to be your testimony?

(Testimony of Jose Ramirez.)

A. No, sir, I do not recall when he was sentenced.

Q. I didn't ask you whether you recall when he was sentenced. I am asking you whether or not you know what disposition was made of his case at the time that you talked to him previous—during the two weeks' period prior to [33] May 17th?

A. No, sir, I don't believe I did know the disposition.

Q. Well, you are not sure, though?

A. That is right.

Q. You are not telling this court under oath that you do not know?

A. Well, I do not know. I don't recall.

Q. You don't recall? A. That's right.

Q. I understand that you tell us now that you didn't also know that he had a prior record, prior to his conviction before Judge Carter of narcotics?

A. As best I can recall, I do not believe that he had a prior conviction.

Q. Did you contact Villas or did he contact you two weeks prior to this date of May 17th?

A. I believe he called me.

Q. On that date did you know that he was on probation?

A. I don't know, sir, as I stated before.

Q. Just answer yes or no, please.

A. I don't know.

Q. You don't know? And then on that date did you make him an employee of the Federal Government? A. Well——

(Testimony of Jose Ramirez.)

Q. Yes or no. [34] A. I do not recall.

Q. When did you make him a special employee of the Federal Government?

A. During that two weeks' period we held a conference.

Q. Just what date was it? That is all I am asking you. A. What date?

Q. What date was it you made him a special employee of the Federal Government?

A. I do not recall.

Q. Well, was it, to the best of your memory, during that two weeks' period? A. Yes.

Q. How long prior to May 17th was it?

A. I do not recall.

Q. You don't recall that either?

A. No, sir.

Q. Well, what words did you use to this Mr. Villas to tell him that he was a special employee of the Federal Government?

Mr. Bender: Your Honor, the Government objects to this line of questioning again on the grounds that this specific question is irrelevant and immaterial; it has nothing to do with any of the issues in this case.

Mr. Marcus: I assure this court I will tie it up.

The Court: I'll overrule the objection. [35]

The Witness: I don't believe that there is any specific words that I used or anyone uses.

Q. Did you tell him he was a special employee of the Federal Government?

A. Well, yes. Well, we usually refer to people——

(Testimony of Jose Ramirez.)

Q. Not what you usually do. I want to know what you told to Villas?

A. I do not recall any verbatim conversation with the defendant, with this person Villas.

Q. Your testimony was that he was a special employee of the Government. You testified that you made him a special employee. I'm asking you how you made him that special employee?

A. By anyone that assists our Bureau.

Q. Did you have any instructionns? Who is your superior officer?

A. Agent Chappell.

Q. What is his name?

A. Chappell—C-h-a-p-p-e-l-l.

Q. Where is his office located? A. 1755.

Q. Of this building? A. Yes, sir.

Q. Did you advise your superior officer that you were going to make a special employee of the Federal Government of [36] this man Villas?

A. Yes, sir, I believe so.

Q. Did you do that in writing? A. No, sir.

Q. That was just a conversation?

A. Yes, sir.

Q. Did you receive any instructions from your superior officer to make him a special employee?

A. Prior to my conversation or after?

Q. Any time, did you receive instructions to make Mr. Villas a special employee of the Federal Government?

A. I don't recall Agent Chappell's——

(Testimony of Jose Ramirez.)

Q. Answer that yes or no. Did you receive any instructions to make him a Federal employee?

Mr. Bender: The Government objects to this question on the ground that it is irrelevant and immaterial. It doesn't tend to prove any issue in this case. It is totally outside the scope of the purpose and any reasonable expectation of being tied into this case, your Honor.

The Court: I'll overrule the objection.

Q. (By Mr. Marcus): Will you answer the question, please?

A. Well, from my interpretation of his conversation, yes.

Q. Relate the conversation.

Mr. Bender: The Government objects to this question on [37] the grounds that it is asking for hearsay statements; it is seeking, perhaps, confidential communications between agents of the Federal Bureau of Narcotics.

Mr. Marcus: I have a right to impeach this witness with respect to his statement on direct examination that this man was an employee of the Federal Government.

Mr. Bender: Well, he defined the meaning of "employee."

Mr. Marcus: Well, his definition, when he got back on the stand after the recess, was not binding upon me.

The Court: I'll overrule the objection.

The Witness: What was the question?

(Testimony of Jose Ramirez.)

(The reporter read the question as follows: "Q. Did you receive any instructions to make him a Federal employee?")

Q. (By Mr. Marcus): Just yes or no.

A. I believe I answered that by saying that my interpretation of his conversation was yes—would be yes.

Q. Well, whom did you receive the instructions from to make him a Federal employee?

A. Well, I imagine that that authority——

Q. I don't want your imagination at all. Just tell me who gave you the instructions to make Mr. Villas a special employee of the Federal Government?

A. That authority rests solely on the investigating officer, with permission of his Agent in [38] charge.

Q. You just told us you received instructions to make him a Federal employee. I'm asking you, who gave you the instructions to make him a Federal employee? A. (A pause.)

Q. Can you answer the question?

A. Not without explaining my answer.

Q. That calls for the name of a person who gave you the instructions. Who was it?

Mr. Bender: The witness has indicated that he can only explain his answer. He can't answer yes or no. Certainly that is permissible.

Mr. Marcus: I don't think that requires explanation at all. He said he received instructions to

(Testimony of Jose Ramirez.)

make him a Federal employee. I'm simply asking him for the name of the person who gave him that instruction?

Mr. Bender: The witness indicated it does need explanation. Where a witness says that, it is his right to give an explanation.

The Court: I will let him explain, if he wants to.

Mr. Marcus: Can he give the name of the person and then give his explanation?

The Court: Yes.

Q. (By Mr. Marcus): Will you do that, please?

A. Yes.

Q. Give me the name of the person? [39]

A. Agent Chappell.

Q. All right.

A. Every investigation is talked over with Agent Chappell—every aspect. The person who is going to assist our Bureau is told to him, and he usually says to go ahead and work it out.

Mr. Marcus: May the answer be stricken as being not responsive to the question, your Honor. I'm not asking you what usually happens.

The Court: I'll let it remain.

Q. (By Mr. Marcus): Do you have any definite recollection at this time of talking to Agent Chappell, your superior officer, as I understand it, concerning the employment of Mr. Johnny Villas as a special agent?

A. I do not have any definite conversation that existed at that time. I do know that I spoke to him about it.

(Testimony of Jose Ramirez.)

Q. Do you have any definite recollection at this time of receiving any instructions from Mr. Chappell to employ Mr. Johnny Villas as a special agent?

A. Not any definite instructions, no, sir.

Q. So then you took it upon yourself to utilize the services of Mr. Johnny Villas, did you?

A. Yes, sir.

Q. Did you tell him what to do?

A. Yes, in a general sense, I sold him what to do. [40]

Q. You gave him instructions, did you not, during that two weeks' period? A. Yes.

Q. And you told him to contact you, did you?

A. Yes.

Q. Who was in the car with Mr. Lozoya, the defendant here, when that car drove up to that market? A. The special employee in this case.

Q. What is his name? Isn't that Johnny Villas that drove up there?

Mr. Bender: The Government objects on the grounds that the indentity of the confidential informer is a matter that is not to be divulged. It is confidential. It is cited in our trial memorandum.

The Court: Yes, I think so.

Mr. Marcus: Your Honor, there is a case that just came out in the advance sheets before this last one. This is a Federal case from, I think it is, the Second Circuit, directly contrary to your position.

Mr. Bender: Then I submit, your Honor, counsel is submitting a case that has no authority in this case. The Ninth Circuit and the Supreme Court

(Testimony of Jose Ramirez.)

cases have the only binding precedent upon this case. The McGinnis case is a Ninth Circuit case.

Mr. Marcus: Your Honor, I am not asking for that. [41]

The Court: I'll overrule the objection.

You may answer.

Q. (By Mr. Marcus): Johnny Villas is the name of the man who was in that car, wasn't it?

The Witness: Shall I answer that, sir?

The Court: Yes.

The Witness: Yes, sir.

Q. (By Mr. Marcus): You knew that Johnny Villas had marijuana in his possession, didn't you?

A. On May 17th?

Q. Or prior to May 17th?

A. No, I did not.

Q. You were the one who arrested him for the possession of marijuana, didn't you?

A. If you are referring to eight months previously, yes.

Q. Well, at any time previously you knew that he was dealing with and had possession of marijuana, didn't you?

A. Eight months ago, yes. Approximately eight months ago, yes.

Q. You didn't know he had possession of marijuana six months ago?

A. I do not know. I was not in contact with him.

Q. You say he contacted you about two weeks before; is that right? [42] A. Yes.

(Testimony of Jose Ramirez.)

Q. Where did you meet him?

A. The first time I met with him was in the office of the United States Attorney.

Q. Where?

A. Here in this Federal Building.

Q. Who was present at that time?

A. His attorney.

Q. What is his attorney's name?

A. I believe it is Graham.

Q. Byron Graham of El Monte?

A. Attorney Graham, from El Monte, yes.

Q. This was approximately two weeks prior to May 17th? A. Yes.

Q. And what else?

A. And Assistant United States Attorney Bender.

Q. Mr. Bender was in on that conversation?

A. Yes, and Agent Chappell.

Q. Isn't it a fact that in the course of that conversation you knew that Mr. Villas was on probation? This has just been about two months ago.

A. I do not recall, sir, at this time, whether I knew he was on probation or not.

Q. Well, wasn't there a conversation about getting him off probation by his attorney Mr. Byron Graham? [43]

A. Getting him off probation?

Q. To have his probation terminated——

A. No.

Q. ——in return for his assisting you?

A. No, I don't believe there was any conversation——

(Testimony of Jose Ramirez.)

Q. Are you sure there was not?

A. I am not sure, but I don't recall the conversation.

Q. After that conversation in the United States Attorney's office between Mr. Bender and yourself and Mr. Villas and the attorney, did you contact him after that? A. I believe he called me.

Q. Well, how many times did he call you between that date and May 17th?

A. Approximately two times.

Q. Always on the telephone?

A. No, sir. Approximately twice on the telephone, and once or twice in person.

Q. And where did you have these meetings in person?

A. One was in the area of Montebello—well, both of them would be in the area of Montebello.

Q. Any out in Whittier? A. No, sir.

Q. You had some conversations with Mr. Villas then? A. Yes, sir.

Q. Did you tell him about Lozoya? [44]

A. No, sir.

Q. You had a conversation about Lozoya, didn't you? A. Yes, sir.

Q. Did you and Villas cook up about meeting at the market? Yes, or no? A. Yes, sir.

Q. You had a conversation with Villas, did you not, about the meeting at the market in Montebello?

A. Yes, sir.

Q. How long before May 17th did you have that conversation with him?

(Testimony of Jose Ramirez.)

A. I think it was the same day.

Q. When was the name Lozoya mentioned the first time?

A. Mentioned in the meeting at the office of the United States Attorney Bender.

Q. Approximately how long prior to May 17th?

A. Approximately two weeks.

Q. Who mentioned the name first?

A. The defendant—pardon me—Attorney Graham, I believe, mentioned his name first, and Johnny Villas also mentioned it.

Q. Didn't Johnny Villas tell you that he worked at a plant—— A. Yes, sir.

Q. ——where Mr. Lozoya had worked? [45]

A. I don't believe he said that Lozoya had worked there. At least, I don't recall him saying that.

Q. Did he tell you he was employed at a foundry where Mr. Lozoya had worked in 1951?

A. He told me that he, Johnny Villas, was employed in a foundry and that defendant Lozoya would come around occasionally.

Q. You don't recollect him telling you that he, the defendant, also worked there?

A. No, sir, I don't.

Q. You don't remember that?

A. I don't remember that, no.

Q. Did you at that time give instructions to Mr. Villas? A. Yes, sir.

Q. You told him what to do in connection with

(Testimony of Jose Ramirez.)

this case, didn't you? A. Yes, sir.

Q. When is the next time you saw him?

A. I do not recall. I believe after that he talked to me over the phone and then I saw him.

Q. Did you continue to give him instructions, what he was to do?

A. Well, I just told him what to do that first day, that's all. [46]

Q. Now, did Mr. Lozoya tell you that he hadn't seen Mr.—pardon me—did Mr. Villas tell you he hadn't seen Mr. Lozoya for approximately two and a half years before May 17th?

A. No, he did not.

Q. He did not? A. No.

Q. Did he tell you that Mr. Lozoya and his wife were operating a restaurant? A. Yes.

Q. He told you that? A. Yes.

Q. Did he tell you that they wanted to sell the restaurant? A. No, he did not.

Q. Did he tell you what sort of restaurant it was?

A. No, he just told me it was a small cafe.

Q. Did he tell you at that time that he was anxious to get rid of the business?

A. Who was anxious?

Mr. Bender: Counsel objects to this on the grounds that it is irrelevant. What anyone would have told this Agent concerning being anxious to get rid of a business certainly could have no bearing on this case.

(Testimony of Jose Ramirez.)

The Court: Yes, I will sustain that objection to the [47] question.

Q. (By Mr. Marcus): Well, at that time you knew Mr. Lozoya was engaged in the restaurant business, didn't you? A. Yes.

Q. Did you instruct Mr. Villas what to do in connection with the restaurant?

A. No. I had no connection with the restaurant whatsoever.

Q. Did you instruct him to contact Mr. Lozoya?

A. I told him that if he saw——

Q. Yes or no? A. Yes.

Q. Did you tell him to contact Mr. Lozoya?

The Court: He has answered it yes.

Q. (By Mr. Marcus): Did you tell him to contact him in any way that Villas saw fit?

A. Yes, sir.

Q. Now, did you hear from Mr. Villas after that first conversation about contacting Mr. Lozoya?

A. Yes.

Q. Did he tell you that he had contacted Mr. Lozoya? A. Yes.

Q. Did he tell you he contacted his wife Mrs. Lozoya? A. No.

Q. Did he tell you he had contacted him at his place of [48] business? A. No.

Q. Did he tell you where he had contacted him?

A. No, he didn't.

Q. Did you then give him some further instructions or advice?

(Testimony of Jose Ramirez.)

A. No. He had my instructions from the first meeting.

The Court: This might be a good time to stop. Is that satisfactory?

Mr. Marcus: Yes, your Honor.

The Court: Make it 2:00 o'clock.

Mr. Bender: Yes.

The Court: And if you can, maybe we will tell Mr. Bowler that we will check with him at 3:00 o'clock.

(Noon recess.) [49]

Tuesday, July 17, 1956—2:00 P.M.

JOSE RAMIREZ

called as a witness on behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

The Court: It looks like you have the exhibit there; is that correct?

Mr. Bender: That is correct, your Honor.

The Court: All right.

Cross-Examination
(Continued)

By Mr. Marcus:

Q. Mr. Ramirez, when is the first time you ever saw Mr. Lozoya in your lifetime?

A. As a fact, sir?

Q. Yes, sir.

(Testimony of Jose Ramirez.)

A. As a fact, on May 17th.

Q. When? A. On May 17th.

Q. When is the first time you ever talked to Mr. Lozoya? A. On May 17th.

Q. And at no time prior to May 17th had you ever talked to or seen or had any business dealings or conversation with Mr. Lozoya; is that true? [50]

Mr. Bender: The Government objects to the question on the ground that it is compound; it covers four different subjects, your Honor.

Mr. Marcus: I have already asked him two of them and he has answered.

The Court: I will overrule the objection. I overruled the objection he made to your question as being compound.

The Witness: On or about October 2nd I saw a person who resembled Mr. Lozoya.

Q. (By Mr. Marcus): But you are not sure he is the same person? A. That is true.

Q. So, so far as your memory now serves you, May 17th is the first day that you have a definite recollection of having seen or talked to or ever had any dealings or relations with Mr. Lozoya?

A. That is true.

Q. Is that correct? A. That is right.

Q. Directing your attention to May 17th again, you say you saw Mr. Villas that day?

A. Yes, sir.

Q. And you talked to him that day?

A. Yes, sir.

(Testimony of Jose Ramirez.)

Q. Did you tell Mr. Villas at that time to meet you at [51] the Beverly Market?

A. In substance, yes.

Q. Well, is it any different than I suggested to you?

A. Well, it was during the course of the conversation that we established the point of meeting at the Beverly Ranch Market.

Q. The Beverly Ranch Market on East Beverly Boulevard, in Montebello?

A. Yes, sir; Beverly and Poplar Streets.

Q. Yes, sir. At that time had he told you that he had talked to Mr. Lozoya? A. Yes, sir.

Q. At that time did he tell you the substance of any conversation that he had with Lozoya?

A. Yes, sir.

Q. At that time did you tell him to meet you at that market? A. Yes, sir.

Q. At that time did you tell him what kind of car you would have there?

A. I think he had prior knowledge of my automobile.

Q. My question was, did you tell him that day what kind of car you were going to drive?

A. I believe I did, yes.

Q. "I believe I did"—does that mean that you did? [52] A. Yes, I believe so.

Q. Well, are you sure?

A. I don't recall the exact statement that I used to Johnny Villas, but I believe I said that I would be in a black Mercury.

(Testimony of Jose Ramirez.)

Q. What year Mercury is it? A. '53.

Q. Is that a convertible? A. Yes, sir.

Q. A '53 convertible, black in color, wasn't it?

A. Yes.

Q. What time did you arrive there that evening?

A. 7:00 p.m.

Q. What day of the week was it?

A. I do not recall, sir.

Q. Was that market open at that time?

A. Was it open?

Q. Yes. A. Yes, sir.

Q. I want you to describe the area immediately adjacent to where you parked, to the Judge. First, I will ask you if there is a house immediately next to the place where you were parked?

A. There is a long row of houses which resemble a tourist court. I don't know if it is a tourist court or [53] whether they are residences, but it is a long row. That is directly behind the automobiles where we were parked.

Q. Isn't it a fact, Mr. Ramirez, that immediately adjacent within a distance of two or three feet there was an inhabited dwelling where your car was parked?

A. Adjacent to the rear or to the side?

Q. Any place? A. To the rear, yes.

Q. And it was within two or three feet?

A. No, sir.

Q. How far?

A. I would say eight to ten feet.

Q. Well, weren't you a distance of two or three

(Testimony of Jose Ramirez.)

feet during your conversation with Mr. Lozoya of that house? A. I was not.

Q. Did you see any people that were coming out of that house?

A. During the time I was talking to Mr. Villas?

Q. Any time? Did you see any people come out of that house when you were there?

A. Yes, I did.

Q. Did you see some of the people who were seated in this court go there?

A. No, I did not.

Q. Could you identify the people today that you saw [54] coming out of that house?

A. No, I could not, because I didn't pay any attention.

Q. Do you remember somebody coming up to you during the time that you were talking there to Lozoya and telling you to quit using vile and abusive language in the presence of the children that were there? A. No, I do not recall that.

Q. Do you deny that somebody did come up there and ask you to refrain from using vile and abusive language in the presence of children that were there?

A. I do not recall anyone coming up there.

Q. Is it a fact, sir, that these other officers drove in on that lot in an automobile?

Mr. Bender: Counsel for the Government objects to the question on the ground that it has not been shown—you haven't established the time when, here.

(Testimony of Jose Ramirez.)

Mr. Marcus: I will come to that.

The Court: Withdraw the question and give the time.

Mr. Marcus: I'll do that, your Honor.

Q. (By Mr. Marcus): Well, you testified that just within a matter of minutes some officers came on the lot; is that right?

A. I testified, yes, sir, in a matter of minutes after defendant Lozoya had backed the car adjacent to mine.

Q. You testified that the whole transaction consumed [55] about five minutes; do you remember that? A. Yes, sir, I believe so.

Q. You testified, did you not, sir, that some officers came on the lot?

A. Yes, sir, some officers walked toward us.

Q. How did they get onto that lot?

A. Agent Gullen and Agent Freeman walked, and I believe—I'm not positive—Agent Miller and the rest came in an automobile.

Q. Is it a fact that four officers drove——

A. I——

Q. ——onto that lot in an automobile?

A. No, sir, not four.

Q. How many were in the car that drove onto that lot? A. I do not know.

Q. Well, you testified you saw the officers across the street? A. I did.

Q. How long before this incident took place did you see the officers across the street?

(Testimony of Jose Ramirez.)

A. I saw them between the period of 7:00 to the time of the transaction.

Q. Well, were they in an automobile?

A. No, they weren't.

Q. Wait a minute. At the time you saw them across the [56] street?

A. No, sir; they were on the street.

Q. Walking around?

A. Yes, sir. I believe that the ones across the street had the trunk of the government vehicle open.

Q. Please, I don't want you to guess on these things. You say you believe. If you are sure of it and you can testify under oath that that is what happened, tell us. If you are guessing, just tell us so. Are you sure that the trunk was open?

A. Yes, sir.

Q. Did you see it open? A. Yes.

Q. What do you mean before when you said you guess? A. I don't believe I guessed.

Q. Or you believed that the trunk was open? Was there some doubt in your mind a few minutes ago?

A. No, I think that is just a manner of speaking.

Q. Did these officers, to your knowledge, drive onto the lot in an automobile?

A. Which officers?

Q. The four officers that were across the street?

A. I don't believe there were four officers across the street.

Q. Well, if there was two or one officer, did any

(Testimony of Jose Ramirez.)

one [57] of the officers drive upon the lot in an automobile?

A. No, I did not see them walk across the street.

Q. Did you get into an automobile after this transaction? A. I did.

Q. Was the automobile you got into on that lot?

A. Yes, sir.

Q. Did you see the automobile get on the lot?

A. It was my automobile, the one that I had driven, on the lot.

Q. You got into your car? A. Yes, sir.

Q. Did you see what car the defendant Lozoya got into?

A. Yes, sir.

Q. Which one? A. A Buick.

Q. Whose car was that Buick?

A. I do not know which Agent it is assigned to. I believe it is Agent Miller's.

Q. Did you see how that car got onto the lot.

A. I imagine it was driven on.

Q. I don't want you to imagine.

A. I didn't see it driven on, no.

Q. Isn't that the car the agents drove onto that lot?

Mr. Bender: The witness has already testified that he [58] didn't see it driven on. How can he answer that?

Mr. Marcus: I am not bound by his answer. I have a right to cross-examine him to show he is mistaken, that he saw the car drive on there, because he got into it or at least the defendant got into it.

(Testimony of Jose Ramirez.)

The Witness: I did not see the car driven into the lot.

Q. (By Mr. Marcus): When did you see the car the first time?

A. When it was in front of my car immediately after the transaction.

Q. All of a sudden it appeared in front of your car? A. Yes.

Q. You never saw how it got on there, when it got on there? A. No, sir.

Q. When did you first notice that car appear in front of your car?

A. Well, when this transaction took place—after the transaction took place.

Q. Mr. Ramirez, isn't it a fact that the officers, the other officers drove that car onto that lot?

A. Well, someone must have driven it, because it can't operate by itself.

Q. I know. Well, you saw these officers come with drawn guns toward you, didn't you? [59]

A. I saw Agent Gullen, yes.

Q. Didn't you see the other officers come with drawn guns toward you? A. I did not.

Q. When did you see the other officers for the first time?

A. Well, after Agent Gullen and Agent Freeman had arrived, a matter of a minute or two.

Q. You saw Mr. Lozoya and Mr. Villas drive up in Mr. Lozoya's car, didn't you?

A. Yes, sir.

Q. Were you outside of your car at that time?

(Testimony of Jose Ramirez.)

A. No, sir; I was sitting in the car.

Q. Were you eating a banana at that time?

A. Yes, sir.

Q. And you continued to eat that banana during the entire conversation?

A. Up until I dropped it.

Q. I understand. During the entire conversation, I said? A. Yes, sir.

Q. What was the first words that were said, as you remember, when Johnny Villas walked up to you? What was said first?

A. He says—he says, "I don't know if he brought the [60] stuff with him or not."

Q. He said that? A. Yes.

Q. What did you say then?

A. I didn't say anything. I just went up to talk to the defendant Lozoya.

Q. Was Lozoya there at that time?

A. Lozoya was seated in the car.

Q. Villas got out of the car and walked up to you? A. Yes.

Q. And said, "I don't know if he brought any stuff or brought the stuff with him"? A. Yes.

Q. So then you walked over to where Mr. Lozoya was sitting in his car? A. Yes.

Q. You had never met the man before?

A. No, sir.

Q. You didn't know him from Adam, did you?

A. Yes, sir.

Q. Oh, you did? Well, you hadn't been introduced to him? A. No, sir.

(Testimony of Jose Ramirez.)

Q. You had no conversations with him on any previous occasion? [61] A. No, sir.

Q. And you walked up to his car alone, without any introduction? That is what I am to understand? Yes, or no?

A. Yes, I walked up there and spoke to him.

Q. Did you tell him your name?

A. No, sir.

Q. Did you tell him where you were from?

A. No, sir.

Q. Did you have conversation in the English language or Spanish language?

A. I believe that it was mixed English and Spanish. Predominantly it was in Spanish.

Q. When you say "I believe," does that mean you are not sure? A. I am not sure.

Q. At least, you began conversing with him?

A. Yes.

Q. What is the first words that were said by any of you two at that time?

Withdraw that.

Who spoke first?

A. I believe Johnny Villas.

Q. You believe? Is that——

A. Well, I didn't keep a record of who spoke first, but to the best of my recollection Johnny Villas spoke first. [62]

Q. What did he say, to your best recollection? What were the first words he said?

A. To my best recollection, he said, "Cuckoo, this is my friend here."

(Testimony of Jose Ramirez.)

Q. I didn't get that.

The Court: "Cuckoo."

Mr. Bender: "Cuckoo, this is my friend here."

Q. (By Mr. Marcus): Well, who was he directing his remarks to? A. Defendant Lozoya.

Q. Said to whom?

A. Johnny Villas said to defendant Lozoya, "Cuckoo, this is my friend here."

Q. Did he give him your name?

A. No, I don't think he did.

Q. Well, when you say again you don't think so, do you mean that he didn't or you don't remember? A. It means that I don't recollect.

Q. Please, Mr. Ramirez, if you don't remember, say so. You don't remember whether any names were given? A. That is right.

Q. Did Mr. Villas at that time tell you Mr. Lozoya's name?

A. No; he just said "Cuckoo."

Q. Then who spoke next? [63]

A. I did. I said, "Orali." You know, that is just like "Hi" in Spanish.

Q. Then what transpired after that?

A. I asked him if he had something for me, and he said "Yes."

Q. Did he ever mention at that time what it was?

A. Yes, sir.

Q. Well, was that part of the conversation?

A. Yes, sir.

Q. Well, as I understand, you asked him, "Have you got anything for me"?

(Testimony of Jose Ramirez.)

A. "Do you have anything for me?"

Q. "Do you have anything for me?"

A. Yes.

Q. And he said "Yes"? A. Yes.

Q. And then what did you say?

A. I said, "How much do you have?"

Q. Nothing else said before that at all?

A. No, sir.

Q. And what did he say when you said "How much"? A. He said "Ten pounds."

Q. "Ten pounds?" Now, Mr. Ramirez, isn't it a fact that Mr. Villas walked up to that car and said, "This is Mr. Lozoya, who I talked to you about, who owns that restaurant"? [64] A. No, sir.

Q. You knew that he owned the restaurant at that time, didn't you?

A. I knew he was connected with the restaurant. I didn't know whether he was the proprietor or just the manager.

Q. Was anything at that time stated about a restaurant? A. No, sir.

Q. Isn't it a fact that you said to Mr. Lozoya that your name was M. Ramirez? A. No, sir.

Q. Didn't he tell you that you were driving a beautiful car? A. I don't recall.

Q. Isn't it a fact that at that time you said to him, "Are you interested in doing business with me"? A. No, sir.

Q. Isn't it a fact, sir, at that time he asked you if you were interested in buying his restaurant?

(Testimony of Jose Ramirez.)

A. No, sir.

Q. Nothing said about a restaurant?

A. No, sir.

Q. What did Villas say at that time?

A. At what time?

Q. At that time during that very portion of the conversation? [65]

A. As I recall, Villas didn't say anything except the introduction.

Q. Well, your purpose, sir, at that time was to buy some marijuana, wasn't it? A. Yes, sir.

Q. And you were using Villas to help you?

A. Yes, sir.

Q. You didn't know what Villas had told Mr. Lozoya before on the way over there, did you?

A. No.

Q. Didn't you and Mr. Villas talk together alone in your car before you walked over to Lozoya's car?

A. Just the conversation that I have given here, that he said, "I don't know if he has got the stuff or not."

Q. I am asking you if you didn't talk together alone? A. Just that conversation.

Q. I didn't ask you how much. A. Yes.

Q. I just asked you if you didn't talk alone?

A. Yes.

Q. Then you proceeded to the car of Mr. Lozoya?

A. Yes.

Q. There were a lot of cars parked on that lot. weren't there?

(Testimony of Jose Ramirez.)

A. There were a few, yes. [66]

Q. What do you mean by a few?

A. By a few I would say in the area of eight cars.

Q. Right in the same vicinity that your car was parked; is that right?

A. Well, two different vicinities, if we are to divide the lot into areas.

Q. The market was open, people were walking in and out of that market weren't they?

A. Yes, sir.

Q. Did you tell him that you wanted to buy some marijuana?

A. I didn't use those exact words, no.

Q. Well, was that the language, in substance, that you used to Mr. Lozoya? A. Yes.

Q. That you wanted to buy some marijuana?

A. Yes.

Q. Didn't he say to you, "What makes you think I have marijuana to sell"? A. No.

Q. Well, did you begin talking about the marijuana? A. Yes, sir.

Q. Didn't you tell him at that time that you had a pocketful of money? A. No, sir. [67]

Q. Did you tell him you had enough money to buy marijuana? A. No. sir.

Q. Didn't you take out the money, a roll of bills, and say, "Here is the money I have to buy marijuana with"? A. No, sir.

Q. Didn't show him the money? A. No, sir.

Q. Didn't you take out the money at any time?

(Testimony of Jose Ramirez.)

A. Toward the end of the transaction, yes.

Q. Well, this whole business only took five minutes? A. That is true.

Q. Didn't you take your money out of your pocket?

A. Toward the end of the transaction, yes.

Q. I didn't ask you that, I just want to know if you didn't take the money out of your pocket?

A. During that period, yes.

Q. Yes, and you showed it to Mr. Lozoya, didn't you? A. Yes.

Q. Didn't you tell him, "I have plenty of money to buy all the marijuana I want"?

A. No, sir.

Q. Did you tell him how much money you had?

A. No.

Q. Didn't you tell him you had enough to buy ten [68] pounds with? A. No.

Q. Well, you know how much ten pounds cost, according to what you stated in the conversation?

A. Yes.

Q. How much was it?

A. $60 a pound, or $600.

Q. That would be $600, wouldn't it?

A. Yes, that is true.

Q. Did you have the $600 on you? A. Yes.

Q. And you took that $600 out of your pocket?

A. Yes.

Q. And you showed it to him, didn't you?

A. Yes.

(Testimony of Jose Ramirez.)

Q. Where did you have that money that you took out of your pocket? What pocket was it in?

A. In my left front pocket.

Q. Was it wrapped up?

A. It was just folded.

Q. What was the denominations of it?

A. It was mixed denominations, twenties, tens and fives.

Q. Do I understand, sir, you to testify under oath that this man went to his car, parked there in the open, opened the back of the trunk, took out some substance there [69] in a gunny sack, and put it into your car? A. Yes, sir.

Q. And you hadn't paid him a dime of money?

A. That is true.

Q. How old are you, by the way? A. 29.

Q. You have been a narcotics officer, a regular narcotics officer for about a year and a half or two years? A. It will be two years on August 8th.

Q. This was a deal involving, as you claim, $600?

A. Yes.

Q. You had never seen this man before and he took out $600 worth of marijuana and put it into your car before you gave him or intended to give him a dime? A. That's right.

Q. And you never gave him a dime?

A. That is right.

Q. Isn't it a fact, sir, when these other officers walked up to that car, they asked you, "Where is the stuff"?

A. No, sir; they didn't ask me that.

(Testimony of Jose Ramirez.)

Q. And isn't it a fact that you said, "It's in my car"? A. No, sir; I don't recall.

Q. Nothing like that said at all?

A. No, sir.

Q. In substance or effect? [70]

A. No, sir.

Q. And didn't you say, "I opened"—then they went to the car, opened the trunk of your car and took the stuff out of your car? Did that happen?

A. Yes, sir.

Q. And they asked you, "What's this stuff"—the other officers? A. Asked me——

Q. Asked you that question?

A. I don't recall that question being asked.

Q. You don't deny it, do you?

A. I don't recall it.

Q. You don't remember that? And isn't it a fact, sir, that you said at the time, "I don't know. This car is registered to my girl's name"? Do you remember making that statement? A. Yes, sir.

Q. And "You will have to ask her how that stuff got into the car"; do you remember making that statement? A. Not the latter statement, no.

Q. Did you say, "You would have to find out from her how it got into the car, because it was registered to her name"?

(A pause.)

Q. Why do you hesitate on these answers? [71]

A. I am trying to remember the conversation as it occurred.

(Testimony of Jose Ramirez.)

Q. Well, you stated already that you had conversation with them, in which you said the car belonged to your girl friend?

A. Yes, I remember that conversation.

Q. Didn't they ask you who the girl friend was?

A. No, sir.

Q. Did you tell them that the car was registered in your girl friend's name? A. Yes.

Q. Didn't you tell them, in that same conversation, that they would have to find out from the girl, because you just borrowed the car?

A. I recall saying that I borrowed the car from her.

Q. How did you happen to say that you borrowed the car from your girl friend? Wasn't it in connection with how that package got into the back of your car?

A. This conversation was for the purpose of defendant Lozoya as I was arrested.

Q. I didn't ask you for the purpose. I want to know what was said. I know what your purpose was.

The Court: He just wants the conversation.

Mr. Marcus: That's all I want.

The Witness: O.K. [72]

Q. (By Mr. Marcus): Try to remember this part, will you? A. Yes.

Q. You didn't tell Mr. Lozoya that you were an officer? A. No, sir.

Q. You didn't tell him that Mr. Villas was a special narcotic officer, did you? A. No, sir.

(Testimony of Jose Ramirez.)

Q. Or that he, Villas, was employed by the Federal Government either, did you? A. No, sir.

Q. This Villas, now, was never employed by the Federal Government, was he?

A. He was assisting our Bureau, yes.

Q. I didn't ask you that question. He was never employed by the Federal Government, was he?

A. He was employed to assist us in this investigation.

Q. That means that you hired a stool pigeon; is that it?

Mr. Bender: That is objected to as asking for a conclusion, your Honor.

Mr. Marcus: I'll withdraw it.

The Court: All right.

Q. (By Mr. Marcus): Does his name appear of record in your department as an employee of the Federal Government?

A. The records in Washington, D. C.?

Q. Here in your Department here? [73]

A. I do not know whether there has been any written letters to that effect, no.

Q. Mr. Ramirez, you know very well that he is not an employee and never has been an employee, nor does his name appear of record as being an employee of the Federal Government; isn't that a fact? A. Has never appeared——

Q. As an employee of the Federal Government in the Narcotic Division?

A. In what capacity?

(Testimony of Jose Ramirez.)

Q. I didn't say anything about capacity at all. As an employee of the Federal Government in the Narcotics Division?

A. He was employed to assist us in this investigation, Yes.

Q. Does his name appear of record in any records or documents as an employee of the Federal Government?

A. As I said before, I do not know if there is any written testimony to this effect.

Q. I didn't want any written testimony. I want to know whether or not his name appears in any record? A. I do not know.

Q. Of the Federal Government. I want to subpoena that record. A. I do not know.

Q. As a matter of fact, you do know that his name does [74] not appear as a Federal employee, don't you? A. I do not know.

Q. Who was it—what officer was it that asked you who that car belonged to? A. What car?

Q. That is the car you were driving?

A. I do not recall.

Q. Well, it would have to have been one of the four, wouldn't it? A. That is true.

Q. And you remember that conversation?

A. Yes, sir.

Q. And you don't know who said it?

A. That is right.

Q. Did you make a record of the conversations that were had there?

A. Only with the defendant Lozoya.

(Testimony of Jose Ramirez.)

Q. Did you make a record of the conversations that were held there? A. Yes.

Q. Where is that record?

A. Upstairs in the office.

Q. Did you refresh your memory from that record before you testified today? A. I did. [75]

Q. Did you bring the record down to court with you? A. No, sir.

Q. Is there anything in that written record that says that one of the officers asked you who that black '53 convertible belonged to? A. No, sir.

Q. You left that out? A. Yes, sir.

Q. Is there anything in that written record that says that you told that officer that the car belongs to my girl friend? A. No, sir.

Q. Did you leave that out of that written record?

A. Yes, sir.

Q. Is there anything in that written record that says that Mr. Lozoya told you that he had brought the stuff? A. Yes, sir.

The Court: You say brought the stuff?

Mr. Marcus: Brought the stuff.

The Witness: Yes, sir.

Q. (By Mr. Marcus): Is that the words that he used? A. No, sir.

Q. Well then, tell us what words he used?

A. I asked him if he had something for me, and he said "Yes." [76]

Q. Is that all that was used in connection with marijuana? A. No, sir.

(Testimony of Jose Ramirez.)

Q. Well, what else did he say in connection with it?

A. I asked him how much he had, and he said "Ten pounds." Then I asked him how much it would cost, and he said "$60 a pound." I asked him if the marijuana was good——

Q. Did you use the word "marijuana"?

A. Yes, only in Spanish.

Q. Beg your pardon. A. Only in Spanish.

Q. Tell me the difference between English and Spanish in marijuana. Aren't the words the same?

A. No.

Q. What is the word for "marijuana" in Spanish?

A. There are various words used on the street.

Q. You said you used "marijuana" in Spanish. What is the word for "marijuana" in Spanish?

A. Marijuana.

Q. So it is the same thing? A. Yes.

Q. What do you mean, it was not the same word in Spanish?

A. Because I didn't use the term "marijuana." I used "llesca." [77]

Q. What did he use?

A. All he said was "Yes."

Q. Then you didn't use the word "marijuana"?

A. I used the word "llesca."

Q. Is that marijuana? A. Yes, it is.

Q. "Llesca" is marijuana? A. Yes.

Q. You know I speak Spanish, don't you, Mr. Ramirez? A. Yes.

(Testimony of Jose Ramirez.)

Q. "Llesca" means marijuana? A. Yes.

Q. In what language?

A. In the language used by the people on the street.

Q. That all depends on what street you are on, doesn't it? A. That is true.

Q. That is a slang expression?

A. Yes, it is.

Q. And to you that meant "marijuana"?

A. Yes.

Q. But the true word in Spanish is marijuana, isn't it? A. Yes.

Q. And that is the same way you pronounce it in English, isn't it? [78] A. Yes.

Q. Now, when this boy Lozoya arrived there, did you observe his features?

A. I saw him, yes. I saw him driving the car.

Q. My question was, did you observe his features? A. Yes.

Q. You saw his face? A. Yes.

Q. Did he have a black eye at that time?

A. I didn't notice whether he did or not.

Q. Well, if you observed his features, you could tell whether a man had a black eye or not, if you talked to him five minutes, as you claim you did, couldn't you?

Mr. Bender: That is objected to as being argumentative, your Honor.

Mr. Marcus: It is. I withdraw it.

The Court: The question is withdrawn.

(Testimony of Jose Ramirez.)

Q. (By Mr. Marcus): You say you looked at the man, you talked to him? A. Yes.

Q. You didn't observe whether or not he had a black eye?

A. I didn't notice a black eye.

Q. At least you didn't see any?

A. That's right. [79]

Q. Did you see any marks or bruises or contusions about his head or his face at that time?

A. No, I did not.

Q. Mr. Ramirez, when one of these other officers, whose name you do not now remember, opened the back trunk of your car and took out this marijuana, took out this package——

Mr. Bender: The Government is going to object to the question on the ground that he states he does not remember. There is no testimony by this witness. He didn't remember the name. He didn't know who did it.

The Court: Well, let him finish.

Mr. Bender: I'm sorry. He paused. I thought he was waiting for me to make an objection.

The Court: Start all over.

Q. (By Mr. Marcus): This officer who opened the trunk of your car, do you remember his name?

A. No, sir.

Q. Do you remember what officer said to you that this stuff, how did it get into the car, and you said it was your girl friend—do you remember who said that? A. No, sir.

Q. Is that the same officer who opened the trunk

(Testimony of Jose Ramirez.)

of the car? A. I do not recall.

Q. Well, this was rather important at the time, wasn't [80] it? A. What? That conversation?

Q. This transaction was rather important at the time? A. That conversation you just repeated?

Q. Yes. A. Yes, it was.

Q. Then you don't remember it now?

A. That is true.

Q. Well, did this officer say to you at the time, "You're coming along with us"? A. Yes.

Q. Did he say that you were under arrest, too?

A. Yes, sir.

Q. They didn't put any handcuffs on you, did they? A. No, sir.

Q. They put the handcuffs on Mr. Lozoya, didn't they? A. Yes, sir.

Q. What did he say when they were putting the handcuffs on him?

A. I do not recall his conversation, but he said that he had stopped in the store to buy some groceries. I believe that is what he said.

Q. Do you have that in your written report?

A. No, sir.

Q. You are just guessing about that conversation, [81] aren't you?

A. It is to my recollection, yes.

Q. Isn't it a fact that he said at the time, "I didn't take any marijuana out of that car and put it in any other car"? A. Yes.

Q. Didn't he say that?

A. Not in those words.

(Testimony of Jose Ramirez.)

Q. In substance and effect?

A. In substance, he said he had not placed that sack in my car.

Q. And didn't he say he knew nothing about any marijuana?

A. I believe he said, "I don't know anything about it. I don't recall the word "marijuana."

Q. What did you say at the time he didn't know anything about it? A. Nothing.

Q. You didn't say he put that stuff in your car, did you? A. No, sir.

Q. You didn't say Villas had brought him over there for the purpose of delivering marijuana to you? A. No, sir.

Q. You hadn't given him any money at that time, either, [82] had you? A. No, sir.

Q. You have access to marijuana, haven't you?

A. No, sir.

Q. Well, you had access to this marijuana, didn't you? A. Yes.

Q. How many times have you made arrests for marijuana in the past?

(A pause.)

The Court: Just approximately?

The Witness: I don't recall. Approximately two times, I believe—once or twice.

Q. (By Mr. Marcus): You mean to say you can't remember how many arrests you made, if it is only two in the past year? A. That's right.

Q. Well, whom did you arrest the first time?

(Testimony of Jose Ramirez.)

A. I don't recall.

Q. In the past year?

A. In the past year, I do not recall whom I have arrested.

Q. Who was the second arrest you made?

A. I don't recall.

Q. You don't even remember who the two were?

A. Of marijuana arrests? [83]

Q. That's what I'm talking about.

A. Lozoya.

Q. I'm not talking about that. I'm talking about other arrests you made before this occasion.

A. I don't recall whom I have arrested prior to this occasion.

Q. You have been on this force for two years?

A. Yes, sir.

Q. And you don't know whom you arrested in the past year? A. That's right.

Q. And there were only two?

A. That is right.

Mr. Bender: There has been no testimony that there were only two.

Mr. Marcus: He said he thinks there was two arrests.

Am I mistaken?

Mr. Bender: He said about two—that is, for marijuana, he said.

Mr. Marcus: Yes, that's exactly what I said, for marijuana.

The Court: Yes.

Q. (By Mr. Marcus): Now listen, wasn't it Mr.

(Testimony of Jose Ramirez.)

Villas one of the arrests that were involved in this case? I'll try to remind you. [84] A. No, sir.

Q. That was not a marijuana case?

A. Yes, it was.

Q. You were involved in that arrest, weren't you? A. Yes.

Q. That was one of them, wasn't it?

A. If you will recall, that was prior to this year.

Q. I said within the past year.

A. It was before the first of this year.

Q. I didn't say before the first of this year. I said the prior year.

A. To this transaction?

Q. Yes. A. Yes, it was.

Q. So we have one now? A. Yes.

Q. Moreno was the second one, wasn't he?

A. That's right.

Q. Is that right? A. That is right.

Q. I happened to be interested in both those cases, do you remember? A. Yes.

Q. Did you make any other arrests for marijuana during that period of time? [85] A. Yes, sir.

Q. Tell me who they were.

A. Rommels and Rojas.

Q. That was that same case? A. Yes.

Q. That was only one arrest, but four defendants involved; isn't that right? A. Yes.

Q. Did you make any other arrests besides in that case? A. No, sir; I don't believe so.

(Testimony of Jose Ramirez.)

Q. You don't believe so?

A. I can't testify without checking my records.

Q. I am testing your memory right now. You are testifying to conversations that were had five months ago, and you don't know whom you arrested in the past year when there were only two. Did this defendant here, Mr. Lozoya, ever tell you that this marijuana was his? A. Yes.

Q. When?

A. When he said, "There is no complaint about my stuff."

Q. That was when?

A. During this conversation.

Q. Did he tell you that this marijuana was his?

A. He said "my stuff."

Q. "There's no complaint about my stuff"? [86]

A. That is right.

Q. I am talking about this marijuana here. Did he tell you anything about this marijuana?

A. He said "my stuff."

Q. Mr. Ramirez, you say you looked at it?

A. Yes.

Q. This all happened in a period of a few minutes; is that right? A. Yes.

Q. In the meantime, before you got a chance to deliver any money, your friends, your fellow officers came with drawn guns? A. Yes, sir.

Q. At that time didn't you tell your friends that that stuff must have belonged to your girl friend, you didn't even know what it was?

A. I don't recall that conversation.

(Testimony of Jose Ramirez.)

Q. What were you hiding about then, because this defendant was under arrest, wasn't he?

A. Yes, sir.

Q. You had no reason at that time to hide your identity, did you? A. I did.

Q. Well, if he was under arrest and you had the marijuana, there was certainly no reason to hide your identity, [87] was there?

A. Yes, there was.

Q. Because he admitted to you, isn't it a fact, that the marijuana belonged to him, or that he had transferred it from one car to another?

A. No, sir.

Q. Isn't that the reason? A. No, sir.

Q. And you wanted to go along to the station to see if you could get further information from him?

A. No, sir.

Q. When you got to the station, he told you to shut up, didn't he? A. Sir?

Q. You began talking to him and he said, "You shut up"?

A. Yes. No, sir; he didn't say to "shut up"; he just motioned with a finger.

Q. Motioned with his finger? Did he say "Shush"? A. Yes.

Q. Did he say "Shut up"? A. No.

Q. He told you he didn't want to talk to you, too. didn't he?

A. No, sir; I don't believe he said that.

Q. Didn't he tell you—by the way, was Villas in [88] there, too, with you? A. No, sir.

(Testimony of Jose Ramirez.)

Q. Wasn't even along with you?

A. He was not in the interrogation room.

Q. Did Villas drive with you to the Federal Building here?

A. Yes. Not in my car; in another car.

Q. I don't care how he got here. Did he drive to the Federal Building?

A. No; he was conveyed.

Q. He was conveyed in an automobile?

A. Yes.

Q. And you saw him in the building?

A. Yes.

Q. And you talked to him here in the building?

A. Yes.

Q. Didn't you have a conversation with the other officers in this building about how you were going to get this Lozoya to talk? A. Yes.

Q. And at that time didn't you say, "We will pound it out of him"? A. No, I did not.

Q. Did you see him with a black eye when you got over to the county jail on May 24th? [89]

A. Yes, I believe he had a discoloration of the eye.

Q. Yes, and you saw that his head was bandaged, too, didn't you? A. I do not recall.

Q. Now listen, Mr. Ramirez, isn't it a fact that he was beat up right in this building here?

A. I do not know that.

Q. You were there in the period of the interrogation, weren't you?

A. Not in the same room, no.

Q. I didn't say in the same room. You were there

(Testimony of Jose Ramirez.)

in the Narcotics Bureau offices during this interrogation? A. Yes.

Q. And you saw the other officers go into that room, didn't you? A. Yes, I did.

Q. And you heard screaming in that room, didn't you? A. I did not.

Q. Did you see him come out with his eyes swollen? A. No, I did not.

Q. Did you examine his booking slip when he was booked at the county jail?

A. No, I did not book him.

Q. Did you talk to the other officers as to what was going to happen to the defendant Lozoya if he didn't admit [90] it was his stuff? A. No, sir.

Q. No, no question about it. Did they tell you they were going to pound it out of him?

A. No, they did not.

Q. As I understand, sir, you didn't see anybody strike this man? A. I did not.

Q. There is as much truth to that statement, is there, as there is to the other testimony you have given? A. That is true.

Q. You didn't see him with a black eye when you talked to him out there on the lot?

A. That is true.

Q. Did you see him with his eye swollen when he was in the interrogation room?

A. No, I did not.

Q. Did you see him with a black eye after he was booked at the county jail?

A. No, I did not.

Q. Did you see his eyes discolored?

(Testimony of Jose Ramirez.)

A. On the 24th?

Q. On the 24th. A. Yes.

The Court: I think maybe I'll have you get back to the [91] lectern.

Mr. Marcus: I just wanted to show him this.

The Court: All right.

Q. (By Mr. Marcus): What day was he booked, to your knowledge?

A. That same evening, the 17th.

Mr. Bender: Counsel, would you let me see that, please.

Mr. Marcus: Excuse me (showing document to Mr. Bender).

Q. (By Mr. Marcus): Did Mr. Lozoya at any time admit to you or to anyone else in your presence that he had anything to do with that marijuana?

A. No, he did not.

Mr. Bender: Do you intend to have it marked for identification?

Mr. Marcus: Yes. May the booking slip be marked for identification at this time as defendant's exhibit?

The Court: Yes, Defendant's Exhibit A.

(The document referred to was marked Defendant's Exhibit A for identification.)

(Testimony of Jose Ramirez.)

DEFENDANT'S EXHIBIT B

Name: Lozoya, Refugio G.
No. 424165
Tank No. 11A2.

Property Slip

Date: 5-17-56.

Charge: vio fed narc laws.

Cash Deposited to Account: $30.00.

Rec. No. 215046.

Cash Ret'd. to Prisoner: $2.92.

Property: black billfold & papers, pr. dark glasses, ym wrist watch, 1 key.

Recent Injury or Illness: claims black eye, bruises on right leg.

Booked by: R. Dusm.

Searched by: Olson.

I hereby Authorize the Sheriff or Jailer to Receive and Open All My Mail While I Am Confined to the Los Angeles County Jail.

Signature (Not an Acknowledgment of Guilt.)
/s/ REFUGIO G. LOZOYA.

X-Ray Minifilm No. 95534. Made at Time of Booking.

Identified July 17, 1956.

(Testimony of Jose Ramirez.)

Q. (By Mr. Marcus): Is it not a fact, Mr. Ramirez, that he told you that they had busted his eardrum? A. No, sir.

Q. Were you there until he was taken out of this building for booking?

A. Yes, I was in the offices, yes. [92]

Q. Did you go along at the time he was booked?

A. No, sir.

Q. But you were here when he left?

A. Yes, sir.

Q. Did you talk to him at the time he was leaving? A. No, sir.

Q. Did you see anybody kick him in his legs?

A. No, I did not.

Q. Stomp him?

A. I didn't see him when he left.

Q. At least, at no time, as a result of anything that happened there, did he ever admit that he had anything to do with any marijuana; is that correct?

A. He never admitted to me; no, sir.

Q. Or to anybody else in your presence?

A. Not in my presence, no.

Q. Where do you take the marijuana to impound it after an arrest? A. After an arrest?

Q. Yes.

A. Mr. Chappell puts it in his safe.

Q. What do you do with it?

A. What do I personally do with it?

Q. Yes.

A. I get it and weigh it and seal it and give it to [93] Mr. Chappell.

Q. Is that what you did with this marijuana?

(Testimony of Jose Ramirez.)

A. No, sir.

Q. I am directing your attention to this package here.

A. I just weighed that and sealed it the following day.

Q. So this was in your possession until the following day?

A. No, it was in the safe. I gave it to Agent Chappell.

Q. It was in your possession until you brought it in and booked it and filed it in the safe, wasn't it?

A. Yes.

Q. So you have marijuana in your possession at least some time during the arrest and processing of the evidence? A. Yes.

Q. And how long has that practice been going on? A. Since I have become an agent.

Q. Do you then have access to this marijuana when you want it for any purpose?

A. Yes, I make a——

Q. Yes or no.

A. Yes.

Q. So that the marijuana that is booked and processed by you is available to you, no matter what amount; is that correct? [94] A. Yes.

Mr. Marcus: Just a couple more questions, your Honor, please.

The Court: All right.

Q. (By Mr. Marcus): Were you with the other officers when they went over to the county jail?

A. No, sir.

(Testimony of Jose Ramirez.)

Q. Were you with the other officers when he was taken out of the Federal Building room?

A. No, sir.

Q. Did you hear any conversation between any other officer and the defendant Lozoya?

A. No, sir.

The Court: We can take a short recess now. If you think of any more questions, then you may ask them after the recess.

(Recess.)

Q. (By Mr. Marcus): Mr. Ramirez, did you take possession of the object that you say was in your car? A. Yes, I took possession.

Q. Did you take it with you to the Federal Building? A. Yes, sir.

Q. Did you dust that package at any time for prints? A. No, sir.

Q. You say you saw the defendant have his hands on it, [95] didn't you? A. Yes, sir.

Q. Do you have a crime laboratory?

A. No, sir; we don't.

Q. Do you know how to dust for prints?

A. Yes, sir.

Q. Do you have the paraphernalia to dust for prints? A. Yes, sir.

Q. And you are acquainted with fingerprint dusting? A. Yes, sir.

Q. And how to check fingerprints?

A. Yes, sir.

Q. Did you do it on this package that you had?

(Testimony of Jose Ramirez.)

A. No, sir.

Mr. Marcus: Just a couple of more questions now.

Q. Mr. Villas, you say, was present there at the time that the other officers came up?

A. Yes, sir.

Q. What was said, to your knowledge, by any of the other men to Villas?

A. To stand still, "You're all under arrest." That is in substance.

Q. Said that to Villas, too?

A. To the three of us.

Q. What did Villas say? [96]

A. I do not recall what he said.

Q. By the way, had Villas ever been with you in the presence of those other officers?

A. On one occasion.

Q. All of them? A. No, sir.

Q. How many? A. One.

Q. What was his name? A. Freeman.

Q. How long before?

A. That same day in the morning.

Q. Didn't Villas at that time say, "I have nothing to do with this"?

A. I do not recall his conversation.

Q. Now, didn't Mr. Freeman or one of the other officers say, "What do you know about this, Villas"? A. I don't know, sir.

Q. I'm trying to refresh your memory. Do I understand, sir, that you don't remember that conversation with Villas either? A. That's right.

(Testimony of Jose Ramirez.)

Q. Is that it?

A. That's right. I don't recall.

Q. I'll try to refresh your memory a little [97] bit. Isn't it a fact that one of the officers who came up said, "What is your name," addressing his remarks to Mr. Villas?

A. I don't recall that conversation.

Q. Isn't it a fact that at that time they said to him, "What do you know about this stuff in the car"? A. I do not recall that conversation.

Q. Isn't it a fact that one of the officers said, "Where is the stuff"?

A. No, I don't recall that conversation.

Q. Do you deny that that conversation took place, or you don't remember that that conversation took place?

A. I don't remember that conversation.

Q. Didn't you say at that time, "The stuff is in my car"? A. No. I know that——

Q. Well, the stuff was in your car, wasn't it?

A. Yes.

Q. Didn't one of the officers say, "Is there any stuff in the other car?"

A. No; I don't believe so.

Q. Didn't he search the other car?

A. I do not recall anyone searching that car?

Q. Didn't you look over the car that Mr. Lozoya came in? A. No, sir. [98]

Q. Didn't any of the other officers, in your presence, look over that car? A. No, sir.

(Testimony of Jose Ramirez.)

Q. Now, isn't it a fact, Mr. Ramirez, that you stood there while the other officers went to Lozoya's car and began searching it from top to bottom?

A. I may have been present. I was not aware they were searching.

Q. Well, you were present? A. Yes.

Q. There isn't any question about that, is there?

A. Yes, I was present.

Q. And didn't they go to the car and open up the trunk of Lozoya's car?

A. I do not recall them opening the trunk.

Q. Do you deny they went to the car?

A. I'm not denying it. I don't recall it.

Q. Isn't it peculiar, sir, that you remember some of these things——

Withdraw that.

Isn't it a fact that the other officers, one of them said to you, "We don't find anything in Mr. Lozoya's car, not even a leaf"?

A. No, they never said that.

Q. Well, was there a conversation at that time about [99] marijuana being in Mr. Lozoya's car?

A. No, sir.

Q. Didn't you tell them that it came out of Lozoya's car? A. I did not.

Q. Well, you told them afterward, didn't you?

A. Yes.

Q. You told them before that he was supposed to deliver it to you, didn't you? A. Yes, sir.

Q. So they knew at least from conversation with you that it was to be delivered? A. Yes.

(Testimony of Jose Ramirez.)

Q. Didn't they? A. Yes.

Q. And you say you don't remember whether they searched his car to find some evidence of the existence of marijuana in his car, to connect it up with this marijuana? A. That is true.

Q. Well now, you have been a Narcotics Agent for several years, you say? A. Yes, sir.

Q. And you have been a full-fledged Narcotics Agent for two years? A. Yes, sir. [100]

Q. Didn't it occur to you that at that time, or at least prior to that time, to search Lozoya's car to see if there was even a leaf in his car or a seed or something? A. No, it did not occur to me.

Q. It did not occur to you? A. No.

Q. Don't you think it would have been good detective work at least to have gone to that car and searched it? A. Yes.

Q. But you didn't?

A. If I had been an arresting officer, I would have.

Q. But you were the investigating officer, the contact officer, and you were the officer that was present that had the conversation. As you say, you are the officer that observed him take it from one car to another? A. Yes, sir.

Q. And you had discussed the matter with the other officers beforehand? A. Yes, sir.

Q. And nobody went to Lozoya's car to search it? A. I didn't say that, sir.

Q. I know you didn't say that. But you didn't see anybody go to his car? A. That is true.

(Testimony of Jose Ramirez.)

Q. What happened to his car now? [101]

A. That car remained at the parking lot.

Q. Wasn't that car impounded? A. No, sir.

Q. How many officers went to the station?

A. The station? There were three.

Q. How many remained there?

A. Would you please explain that?

Q. How many officers remained there?

A. Remained where, sir?

Q. Remained there on the lot after you departed for the station?

A. After I departed for the station?

Q. Yes.

A. What station?

Q. Your station here at the Federal Building?

A. Oh, the officers? No one remained there, to my knowledge.

Q. Did you or any other officer find as much as a seed or a leaf in Lozoya's automobile?

A. I did not search his car.

Q. I didn't ask you whether you searched his car. To your knowledge, did anybody find as much as a leaf or a seed in Lozoya's car? A. No.

Q. You say you opened it — you opened, the package, [102] didn't you? A. Yes.

Q. And you say that you examined it, didn't you? A. Yes, while it was in my car.

Q. While it was in your car? A. Yes.

Q. And it was in a gunny sack, wasn't it?

A. Yes.

(Testimony of Jose Ramirez.)

Q. You saw the lid of Lozoya's car open, you say? A. Yes.

Q. And you saw the marijuana come out of that car? A. Yes.

Q. Or whatever it was that was in there?

A. Yes.

Q. Is that right? A. That is right.

Q. And you never even searched Lozoya's car?

A. That is right.

Q. Never looked in it to find out whether there was one seed or one leaf or one twig there, did you?

A. That is right.

Q. You did search the car afterward, didn't you? A. No, I did not.

Q. And you found nothing in Lozoya's car, did you? A. I did not search it. [103]

Q. Any other officer say they searched the car?

A. No one told me they searched the car.

Q. They told you, didn't they, when they came up there, that they saw it taken from one car to another? A. Yes, they said they saw it.

Q. Was the lid of his car opened at the time?

A. It had to be to extract it.

Q. Well, was it? Did you see it open?

A. Yes, I saw it open. I testified that I did.

Q. Didn't you say to the other officers, "Search his car and find out if there is not any marijuana seed or leaves in there"? A. No, I did not.

Q. Villas went to the station, too, didn't he?

A. No, sir.

Q. He was never stopped at all?

(Testimony of Jose Ramirez.)

A. No, sir.

Q. Never detained at all? A. No, sir.

Q. To your knowledge, he went on home from there? A. No, sir.

Q. Where did he go?

A. He was brought to the office.

Q. That is what I say.

A. You say "station," sir, there was a station in the [104] area. I am confused what you mean by "station."

Q. I am talking about the Federal station. Did you have any state officers with you?

A. No, sir.

Q. These were all regular employees of the Narcotics Division? A. There were five Agents.

Q. Were they all regular employees?

A. Yes, sir.

Q. Well, were some of them just what you call special officers or special employees?

A. No, sir; there were five Narcotic Agents.

Q. Including this other special employee?

A. Yes, sir.

Mr. Marcus: That is all, your Honor.

The Court: Anything further?

Mr. Bender: Yes.

(Testimony of Jose Ramirez.)

Redirect Examination

By Mr. Bender:

Q. What do you mean, there were five there, including this other special employee? What designation are you giving him, Mr. Ramirez?

A. Five Narcotic Agents and the special employee.

Q. On May 17th what did Villas tell you concerning the substance of the conversation he had with the defendant? [105]

Mr. Marcus: Who?

Q. (By Mr. Bender): What did Villas tell you concerning the substance of his conversation with the defendant Lozoya?

Mr. Marcus: That is objected to as being hearsay, incompetent, irrelevant and immaterial. It would be a self-serving declaration, hearsay, without the presence of the defendant.

The Court: I will overrule the objection. He may answer.

The Witness: At which time, sir?

Q. (By Mr. Bender): That was on May 17th, at any time before you saw Villas and the defendant at the parking lot at 7:30?

A. Yes, sir. On May 17th, Villas said that the man had ten pounds and was ready to deliver.

Q. About this banana that you say you were eating at the time you had the conversation on May 17th, conversation with the defendant, had you eaten the entire banana at the time you dropped it?

(Testimony of Jose Ramirez.)

A. No, sir.

Q. You had been eating it all the time you had been engaged in conversation?

A. Yes, I would take a bite occasionally.

Q. Was that the prearranged signal?

A. Yes, sir. [106]

Q. At the time you had the conversation with the defendant, before he parked his car parallel with the government car, in other words, during the time that it was out in position in front or roughly in front of the government car, do you recall whether there were any automobiles in the parking lot parked in between that position and the positions of the covering Federal Narcotics Agents?

A. No, sir; there were no cars.

Q. And at the time that the car was parked, that is, the car driven by the defendant Lozoya, had been moved into parallel position to the government car, and at the time that you testified that the defendant Lozoya was removing the sack or the burlap bag from his trunk, do you recall whether there were any cars parked in between that position and the covering officers?

Mr. Marcus: Just a minute, please, Your Honor, I submit that this witness has answered the question before, and he has already testified that he didn't see that car.

Mr. Bender: What car?

The Witness: What car?

Mr. Marcus: The covering car, as you call it.

(Testimony of Jose Ramirez.)

That he never even saw it driven on the lot, he testified.

The Court: I will let him answer.

Mr. Bender: Would you like to have the question read?

The Witness: Yes. [107]

Mr. Bender: Read the question, please, Mr. Reporter.

> (The reporter read the pending question as follows: "Q. And at the time that the car was parked, that is, the car driven by the defendant Lozoya, had been moved into parallel position to the government car, and at the time that you testified that the defendant Lozoya was removing the sack or the burlap bag from his trunk, do you recall whether there were any cars parked in between that position and the covering officers?")

Mr. Marcus: You said the "covering car."

Mr. Bender: Read it again, please.

> (Whereupon the reporter again read the pending question as follows: "Q. And at the time that the car was parked, that is, the car driven by the defendant Lozoya, had been moved into parallel position to the government car, and at the time that you testified that the defendant Lozoya was removing the sack or the burlap bag from his trunk, do you recall whether there were any cars parked in between that position and the covering officers?")

(Testimony of Jose Ramirez.)

The Court: I overruled the objection.

The Witness: No; I do not recall the car being there.

Q. (By Mr. Bender): You didn't see a car?

A. No; I did not.

Q. I am not sure, your statement "No," is that no, you [108] didn't see the car in between or yes, you did see a car in between?

A. No; I didn't see a car in between.

Q. What is your understanding of the meaning of the word "stuff"?

Mr. Marcus: Just a minute. I submit, your Honor, that that calls for this witness' conclusion.

The Court: Yes; I will sustain the objection.

Mr. Bender: The testimony is that he is a Narcotic Agent and he has been for several years, your Honor.

The Court: Well, he can use some other expression.

Mr. Bender: It is my understanding that that is the common parlance.

Q. Mr. Ramirez, did you ever show a photograph of the defendant Lozoya to any of the covering officers before the evening that they covered this occurrence—in other words, before May 17, 1956?

A. Yes, sir. It was after May 3rd, and between May 17th that I showed these pictures to them.

Q. To whom?

A. To the covering officers.

Q. Directing your attention back to this October 2nd, on or about October 2nd, 1955, that is, I believe,

(Testimony of Jose Ramirez.)

your testimony concerning the Villas transaction, the Moreno—— A. Yes. [109]

Q. Did you ever see an automobile on or about this time that was similar to the automobile being driven by the defendant Lozoya on May 17, 1956?

Mr. Marcus: I object to that as being immaterial: He saw an automobile that resembled Mr. Lozoya's car in October.

Mr. Bender: All right, your Honor, to save time——

Mr. Marcus: I would stipulate that he did. You can go out on the corner and see it.

Mr. Bender: That is a foundational question. If he will stipulate to it, I will go on.

Mr. Marcus: Go ahead.

The Court: All right.

Mr. Bender: I accept the stipulation.

Q. In what particulars was this automobile that you observed on October 2nd, 1955——

Mr. Marcus: Object to the question on the ground that it is immaterial, your Honor.

Mr. Bender: You have already stipulated.

The Court: I will overrule the objection.

Q. (By Mr. Bender): In what particulars was the automobile you observed on or about October 2nd, 1955, similar to the automobile driven by defendant Lozoya on May 17, 1956?

A. On October 2nd, 1955, I was negotiating for a purchase of marijuana from Johnny A. Villas. The defendant, at the time, [110] Johnny A. Villas, said that he was awaiting his source of supply and

(Testimony of Jose Ramirez.)

he would be here in approximately 30 minutes. At about noon I observed a 1940 or 1941 cream-colored Chevrolet come to the intersection where I was parked. Johnny A. Villas walked over and spoke to this man. He then returned to the automobile, my automobile, and told me where the marijuana would be located.

Mr. Marcus: Your Honor, I move all that testimony be stricken.

The Court: That may go out, yes.

Mr. Marcus: If counsel had done that sort of trick, and I say "trick" advisedly, before a jury, that would be grounds for a mistrial.

The Court: I will let it go out.

Mr. Bender: Counsel, I resent the remark. What do you mean by "trick"?

Mr. Marcus: You know that sort of evidence isn't admissible, that he was "negotiating" with Villas to buy some stuff and an automobile resembling this one drove by.

Mr. Bender: Counsel, you're going to be surprised to learn that the question I asked calls for an admissible answer.

Will you read the question, please?

Mr. Marcus: The court has already ruled upon it.

The Court: I let it go out. [111]

Mr. Bender: I don't believe the answer was responsive.

The Court: Will you ask the question again, then?

(Testimony of Jose Ramirez.)

Mr. Bender: Would you read the question, please?

> (The reporter read the pending question as follows: "Q. In what particulars was the automobile you observed on or about October 2nd, 1955, similar to the automobile driven by defendant Lozoya on May 17, 1956?")

Q. (By Mr. Bender): How did it resemble it? What did it look like as compared to the one defendant was driving on May 17, 1956?

A. It was a cream-colored automobile.

Q. What type?

A. 1940 or '41 Chevrolet sedan, very poor condition. At the time, the front left fender was considerably smashed, part of it was broken.

Q. And what did the driver of this automobile that you observed on October 2nd, 1955, do with the automobile? In other words, did he park it or did he proceed on?

Mr. Marcus: Objected to as being immaterial to these proceedings, your Honor.

Mr. Bender: Your Honor, it is much more material than the questions counsel was permitted to ask, and without——

The Court: I'll overrule the objection.

You may answer.

The Witness: This automobile parked around the corner. [112]

Q. (By Mr. Bender): When?

A. As soon as he drove up to this intersection.

(Testimony of Jose Ramirez.)

Q. And where did this occur?

A. In West Whittier.

Q. Was a man named Villas in the vicinity at this time? A. Yes, sir.

Q. What did he do?

Mr. Marcus: Your Honor, I am not going to try this case for something that happened on October 2nd. I am not interested in that. I don't think the court is either. It is highly immaterial as to anything that happened six months before.

Mr. Bender: No, it is not.

Mr. Marcus: If he asks him the question directly if he saw this defendant on October 2nd, I won't object to that. But certainly any actions or events that transpired at that time have no bearing upon this case.

The Court: I will allow him a little latitude. I'll overrule the objection.

You may go ahead.

Mr. Bender: Read the question, please.

(The reporter read the pending question as follows: "Q. What did he do?")

Q. (By Mr. Bender): What did Villas do?

A. Villas went over and talked to the person driving [113] this automobile.

Q. Directing your attention back to your testimony concerning the May 3rd—on or about May 3rd, 1956, your testimony concerning the office conference in my office, at which time I believe you

(Testimony of Jose Ramirez.)

testified that you were present—— A. Yes.

Q. ——and Mr. Lozoya was present—I am sorry. ——that you were present, that defendant Villas was present, that Villas' attorney Graham was present and also, I believe, Chappell was present?

A. Yes.

Q. You testified to that?

A. Yes. At this time we discussed who the source of supply of John A. Villas had been.

Q. Would you relate the entire conversation and statements made at that time by defendant Villas concerning his source of supply?

Mr. Marcus: We are certainly not bound with respect to what Villas may have said or claimed in the absence of the defendant. I was only concerned as to the directions to establish an agency, and that is all the purpose of the examination was at that time, to show the agency between the present witness and the defendant Villas. I am not concerned as to any statements with respect to this defendant here at that time. I object to it on that ground. [114]

Mr. Bender: Well, counsel, I may have misundersood your purpose of a portion of your questions on cross-examination. If that purpose is to set forth the theory of entrapment, I would like to know.

Mr. Marcus: Obviously it is for the purpose of entrapment, for one thing, and then to show the agency on the other.

Mr. Bender: All right. Then, your Honor, I cite to the court a case decided by Judge Mathes——

The Court: I'll let you proceed.

(Testimony of Jose Ramirez.)

Mr. Bender: Yes, your Honor. I may as well cite this case, if your Honor would be interested in it. It is a very interesting case on the question of admissibility of all hearsay statements made to the Federal Narcotics Agents as bearing upon their having probable cause to reasonably——

The Court: Well, the court has ruled with you.

Mr. Bender: Yes, your Honor. I thought you might be interested in the case.

The Court: Well, you might work so hard I might change my decision.

Mr. Bender: All right, your Honor.

Q. Would you relate the conversations by defendant Villas? What did he say concerning this defendant Lozoya in the office on May 3rd, 1956?

A. I asked him who his source of supply had been, and he said "Cuckoo." Attorney Graham then gave the name of [115] "Cuckoo" as Refugio Gonzales Lozoya.

I asked Villas what kind of car Lozoya drove, and he said a 1940 or 1941 cream-colored Chevy. I asked him if that was the same one that had arrived on October 2nd right before I bought the marijuana from him, and he said, "Yes."

I then asked Villas to draw me a map of the route that this Chevrolet cream-colored had taken on October 2nd, as I wished to establish the fact that he was positive that this was his source of supply. I didn't want him to say that it was and not recall his actions. Villas then drew me a map of the route taken by this cream-colored Chevrolet, and it coin-

(Testimony of Jose Ramirez.)

cided with what I recalled of the events on October 2nd.

I then asked the defendant Villas whether he could introduce me to Lozoya, and he said that he probably could. I then asked him if he saw him very often, and he said that he didn't see him very often; that Lozoya used to come around at the foundry where he worked.

That is in substance the conversation we held that day, May 3rd.

Q. Now, on May 17, 1956, when the Federal Narcotics Agent Gullen said that, "You're all under arrest," or words to that effect, you didn't believe that you were under arrest, did you?

A. I didn't believe what, sir?

Q. That you, yourself, were actually under arrest? [116] A. No, sir.

Q. Did you arrest Lozoya? A. No, sir.

Q. Then your recollection of anyone that you arrested in connection with a marijuana case is limited to what defendants, if you recall?

A. It is limited to——

Q. That you actually arrested?

A. That I actually arrested?

Q. Yes. That you were the one who said, "I place you under arrest"?

A. There have been none.

Q. What about Villas, Moreno, Ramos—did you actually place them under arrest?

A. No, sir. Villas was arrested by Agent Jones. Ramos was arrested by Agent Goodman and another

(Testimony of Jose Ramirez.)

agent. Rojas was taken in custody by the San Gabriel police department.

Q. Have you been connected with any other marijuana cases since you have been a Narcotics Agent in which you did not make the arrest of the defendant? A. Yes.

Q. What case?

A. I have been connected with the Cancino case, also with a person by name of Rubio Fernandez and a number of heroin cases. [117]

Q. Do you recall ever making an arrest of a defendant in a heroin case? A. Yes, sir.

Q. Who? A. Juarez.

Q. Have you been connected with other cases concerning the defendants who were apprehended for heroin in which you did not make the arrest?

A. Yes, sir.

Q. Do you recall any of them?

A. I recall a Sanchez—Frank Sanchez, and Hernandez that I didn't make the arrest, also I think a person named Penulas (phonetic) that I did not make the arrest, a person by name of Galvan that I didn't make the arrest.

Mr. Bender: Mr. Fisher (the clerk), would you mark this as Government's Exhibit 1.

If he marks the outer package, we will have several other cards. If counsel doesn't object, I would like to have the witness open it, until we get down to the last one.

Mr. Marcus: No objection.

(Testimony of Jose Ramirez.)

Q. (By Mr. Bender, handing the exhibit to the witness): Before you open it, Mr. Ramirez, have you seen this package before? A. Yes, sir.

Q. When is the first time you saw it? [118]

A. Up in the office of the Bureau of Narcotics today after the recess, this morning's recess.

Q. Where did you obtain it?

A. From the office of the Bureau of Narcotics.

Q. And what did you do with it after you obtained it?

A. I took it and placed it on my desk until we came to court.

Mr. Bender: I believe I have reconsidered and would like that the clerk mark the outer package as Government's Exhibit 1.

The Court: All right.

Mr. Bender: That way it indicates the material contained in it.

Would you like to inspect it?

Mr. Marcus: It hasn't been opened yet.

Mr. Bender: I mean the outer carton.

The Court: Well, we will get it marked as an exhibit, and that might be a good time to stop.

Mr. Bender: All right.

The Court: We have marked it as Exhibit 1 for identification.

(The exhibit referred to was marked Plaintiff's Exhibit No. 1 for identification.)

The Court: The clerk has to put it away for tonight.

(Testimony of Jose Ramirez.)

Isn't that right? [119]

The Clerk: Yes.

The Court: All narcotics go in the vault. That takes care of it around the courtroom here.

Do you want to make it about 9:45?

Mr. Marcus: Yes, your Honor.

Mr. Bender: That is fine, your Honor. It is taking longer than I anticipated.

The Court: 9:45, because I told Mr. Bowler and the other gentlemen that maybe we would draw a jury for a case on Friday.

Mr. Bender: 9:45 is perfectly agreeable.

The Court: All right. Make it 9:45 tomorrow.

Mr. Marcus: Have you finished with this witness, counsel?

The Court: No, he hasn't.

Mr. Bender: No.

The Court: Make it 9:45 tomorrow morning.

Mr. Marcus: Surely.

The Court: All right.

(Adjournment until Wednesday, July 18, 1956, at 9:45 a.m.) [120]

Wednesday, July 18, 1956, 9:45 A.M.

Mr. Bender: So that there can be no possible confusion concerning Government's Exhibit 1 for identification, it is the Government's intention to have the last package that is opened be marked Government's Exhibit 1, because that would then coincide with the statement contained in the written

stipulation, which is Government's Exhibit 2 for identification.

The Court: All right.

Mr. Bender: Perhaps the clerk could mark the outer package as Government's Exhibit 1-A.

The Court: All right.

(The exhibit referred to was marked Government's Exhibit 1-A for identification.)

Mr. Bender: And we can mark the successive wrappings B and C.

The Court: All right.

JOSE RAMIREZ

called as a witness on behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Redirect Examination
(Continued)

By Mr. Bender:

Q. Mr. Ramirez, I place before you Government's Exhibit [123] 1-A for identification and ask you if you have seen it before?

A. Yes, I have, sir.

Q. When and where?

A. In the office of the Bureau of Narcotics.

Q. When was that? What did you do with it after you saw it?

A. I took it in my possession and brought it to court yesterday.

Q. And it was in your possession until it was

(Testimony of Jose Ramirez.)

marked yesterday as Plaintiff's Exhibit 1 for identification? A. Yes, it was.

Q. Would you open the outer wrappings which is marked Plaintiff's Exhibit 1-A for identification only? A. (Witness opening package.)

Q. Before you now appears to be another package.

Mr. Bender: May we have the clerk mark that as Government's Exhibit 1-B for identification?

The Court: All right.

(The exhibit referred to was marked Government's Exhibit 1-B for identification.)

Mr. Bender: As we go along, Mr. Marcus, if you would like to inspect any of the exhibits for identification, they are available.

I observe that contained on the front of Government's Exhibit 1-B for identification is the Treasury Department [124] Bureau of Narcotics stamp, but I don't believe that has anything to do in particular—perhaps I should state it this way: I don't believe that counsel would prefer that go into evidence as a portion of the anticipated marijuana exhibit. Of course, you may look at it.

Mr. Marcus: Take it off.

Mr. Bender: All right, I'll tear it off.

(Mr. Bender tearing off the item referred to.)

Q. (By Mr. Bender): Mr. Ramirez, would you open Government's Exhibit 1-B for identification?

A. (Witness opening package.)

(Testimony of Jose Ramirez.)

Q. Open it all the way, Mr. Ramirez. See what we discover inside.

A. (Witness complying.)

Q. What is inside the exhibit?

A. A number of paper sacks, with my initials written thereon.

Q. Are your initials on all of the sacks?

A. I couldn't tell without inspecting all of them.

Q. Inspect them, please.

Mr. Marcus: Your Honor, for the purpose of the record at this time, may the record show that the witness has opened the original container, that he is now removing the sacks from the original carton container, that each of the sacks are open and not sealed? [125]

The Court: All right.

The Witness: Yes, sir, my initials are on each package. There is also included a burlap sack, which also includes my initials.

Mr. Bender: Your Honor, at this time the Government offers into evidence as Government's Exhibit 1-A the outer wrapping on the carton or package, 1-B, the box in which the material was contained, and as Government's Exhibit 1 the contents of the box which is Government's Exhibit 1-B for identification only.

Mr. Marcus: Your Honor, may I at this time take the witness on voir dire?

The Court: Yes.

(Testimony of Jose Ramirez.)

Voir Dire Examination

By Mr. Marcus:

Q. Mr. Ramirez, you state that your initials are on these various sacks? A. Yes, sir.

Q. You notice that all of the sacks are open, do you not? A. Are what?

Q. Are open—they are not sealed?

A. Yes, sir.

Q. Now, sir, did you place—that is, did you personally take the sacks and place them in the carton? [126] A. Yes, sir.

Q. When did you do that? A. On May 18.

Q. Were the packages sealed at that time?

A. No, sir.

Q. Were the packages open at that time?

A. Yes, sir.

Q. Did you examine each of the packages that are contained in the carton at this time?

A. Yes, sir, I did.

Q. Before you sealed it? A. Yes.

Q. Then you sealed the package? A. Yes.

Q. What day was that? A. May 18.

Q. 1956? A. Yes, sir.

Q. And then what did you do with the package?

A. I mailed it by registered mail to the chemist.

Q. Now, since that time you have not, as I understand, seen the package? A. No, sir.

Q. It has not been in your possession?

A. No, sir, until it arrived yesterday. [127]

(Testimony of Jose Ramirez.)

Q. Until it arrived yesterday? Now, have you examined the contents of the package since it arrived yesterday? A. Only here.

Q. Well, the contents of it, have you examined it? What is in the sacks? A. No, sir.

Q. You don't even know what is in the sacks at this time, do you?

A. I presume that it is——

Q. I don't want you to presume anything.

A. I have not checked the contents, no.

Q. So you don't know what is even in the sacks?

A. I have not checked.

Q. You don't even know whether it is the same material that you sent to San Francisco, do you?

A. The mail that I mailed to San Francisco bore my initials.

Q. Yes, sir, but these packages are all open now and you don't know whether the material contained in these packages are the same as you mailed to San Francisco, do you?

A. The package was not opened. I opened it right now.

Q. I am not talking about the carton. I am talking about these various paper sacks here. You see this sack, for instance? A. Yes. [128]

Q. It is open, isn't it? A. Yes, sir.

Q. You haven't even looked at it from the witness stand, have you? A. No, sir.

Q. And you didn't look at it since it came back from San Francisco? A. No.

Q. You don't even know what is in the package

(Testimony of Jose Ramirez.)

that is open, do you? A. That is right.

Mr. Marcus: Obviously at this time it is not admissible in evidence, your Honor.

Mr. Bender: Your Honor, the Government requests that the clerk mark one of the sacks contained in the box with the Government's Exhibit 1-B for identification, marked as Government's Exhibit 1.

Inspect one, Mr. Ramirez, and be certain that it contains your initials, and examine the sack's contents and satisfy yourself, if you are able, that it appears to resemble marijuana.

Mr. Marcus: Just a moment. That is leading and suggestive. I have already stipulated in the record here with respect to the contents, but that doesn't make the evidence admissible by any stretch of the imagination. This witness [129] doesn't know what is in there at the present time, and even though he should testify that he now examines the contents he would have to establish the fact that this is the evidence that was sent to San Francisco —the contents of it. I don't care about the sacks. We're not interested in that.

The Court: I'll overrule the objection. I'll let him answer.

(The exhibit referred to was marked Government's Exhibit 1 for identification.)

Mr. Bender: Examine one of the contents of the sacks, Mr. Ramirez—in fact, examine the contents of every sack.

(Testimony of Jose Ramirez.)

The Court: Just one will be enough.

Mr. Bender: Just one suffice, your Honor?

The Court: I think so, at this time.

The Witness: I have examined this sack. It bears my initials.

Q. (By Mr. Bender): What did you find inside the sack? What did the contents appear to be?

A. It appears to be——

Q. What does it appear to resemble?

A. It appears to resemble marijuana.

Q. Does it resemble the substance which you placed in this sack? A. It does.

Q. Before mailing it to San Francisco? [130]

A. It does.

Mr. Marcus: That is assuming facts not in evidence. He didn't testify that he placed anything in the sack.

The Court: I'll overrule the objection.

Q. (By Mr. Bender): Mr. Ramirez, did you place anything in this sack before mailing the sack?

A. Did I place anything inside the sack?

Q. Yes. A. No, sir.

Q. Did anyone place anything inside the sack in your presence? A. Not in my presence.

Q. What did you do with the substance which you received from defendant Lozoya after you weighed it in the Federal Narcotics office on May 18, 1956?

A. After I weighed it, I placed it in this box. The substance was in these original containers.

Q. In what original containers?

(Testimony of Jose Ramirez.)

A. In these paper sacks.

Q. You mean it was in it at the time you received it or obtained it? A. Yes, sir.

Q. And each of these paper sacks, then, was contained with the contents of the paper sacks as you know it to have been contained in the burlap [131] sack? A. Yes, sir.

Mr. Bender: Counsel, it is the Government's intention to place all of these sacks back into the burlap container and have it marked as Government's Exhibit 1 for identification.

Mr. Marcus: You may do it, if you wish, but I don't see any reason for that, whether he puts it in there or keeps it in the paper containers.

Mr. Bender: All right. Would you mark as Government's Exhibit 1 the burlap sack?

So that there will be no misunderstanding, counsel, does the scope of your written stipulation, which is Government's Exhibit 2, include the substances which are contained within the various paper sacks and include the burlap bag they are all contained in and were contained in Government's Exhibit 1-B for identification?

Mr. Marcus: Well, the stipulation speaks for itself. You see, counsel misses the point that I am making here. There is no evidence at this time in this record that the substance that this gentleman claims that he mailed to San Francisco is the same substance that was examined in San Francisco. There is absolutely not one word of testimony in

(Testimony of Jose Ramirez.)

this record that what he sent to San Francisco was marijuana.

Mr. Bender: But counsel, the scope of your stipulation is that you will stipulate that the substance to be identified [132] by Agent Ramirez as Government's Exhibit 1 is, in the opinion of R. F. Love, marijuana.

Mr. Marcus: That is not the stipulation.

Mr. Bender: Yes.

Mr. Marcus: Have you got it?

Mr. Bender: In particular, look at subparagraph B of the stipulation. The Agent having identified the material——

Mr. Marcus: Wait a minute; let's look at the stipulation I signed.

1. That R. F. Love is duly qualified to examine and analyze narcotic drugs and testify as an expert witness concerning their nature and identity; 2. R. F. Love, if called as a witness at the trial of the above-entitled case would testify under oath that it be deemed that he would so testify as follows: 2A. That he is a chemist employed by or acting on behalf of the Narcotics Bureau of the United States Treasury Department in San Francisco, California.

Mr. Bender: B. That in his employment, in the course of his duties as a chemist, he examined and analyzed Government's Exhibit 1 for identification (which will be identified by Narcotic Agent Jose Ramirez)—after having received said exhibit by registered mail from Agent Ramirez and the Fed-

(Testimony of Jose Ramirez.)

eral Bureau of Narcotics at Los Angeles, California; C. That the analysis made by said R. F. Love reveals that, in his opinion, said Exhibit 1 for identification consists of approximately [133] nine and a half pounds of marijuana.

Now, Agent Ramirez has identified this substance and it is marked as Government's Exhibit 1 for identification. According to your stipulation, you are stipulating that R. F. Love would testify that, in his opinion, it is marijuana.

Mr. Marcus: Counsel, you miss the point yet. Ramirez hasn't testified that the substance that he saw in the package is the same substance that is in there.

Mr. Bender: But counsel, you miss the point. You stipulated that what is identified by Agent Ramirez as Government's Exhibit 1 will be testified to by R. F. Love as having been deemed to be marijuana.

Mr. Marcus: But this witness has not testified yet that what he saw in the package is the same as is in the package now.

Mr. Bender: He testified that it resembles it.

Mr. Marcus: I don't care if it resembles it. It resembles anything, as I will bring out—it resembles alfalfa, it resembles a lot of things. That isn't the question, what it looks like. The question is whether it is the same. There is the point.

I will submit it, that's all. It speaks for itself.

Mr. Bender: Counsel, Agent Ramirez has testi-

(Testimony of Jose Ramirez.)

fied that he did not place the substance in the individual packages.

Mr. Marcus: Judge, may I ask him a couple of questions? [134]

The Court: All right.

Mr. Marcus: I will clear this up in just a minute.

Q. Mr. Ramirez, you have examined the contents of one sack? A. Yes, sir.

Q. Can you tell this court that that is the identical substance that you sent to San Francisco? Yes or no. A. The substance——

Q. Yes? A. No, sir.

Mr. Marcus: That is all.

Q. (By Mr. Bender): Mr. Ramirez, you have examined the contents of the sack. Does it appear to be or to resemble the substance that you sent to San Francisco? A. Yes; it does.

Mr. Marcus: Permit me, your Honor.

Q. This resembles alfalfa, too, doesn't it?

A. No, sir. Alfalfa is coarser stems, larger stems —dried alfalfa.

Q. Well, it resembles a lot of things, doesn't it?

A. Yes; it does.

Q. So you can't tell us definitely at this time that that was the same substance that you sent to San Francisco, can you?

A. I didn't say it was the same. I said it resembled [135] it.

Q. My question is, you can't definitely tell us, under oath, that it is the same substance, can you?

A. No, sir.

(Testimony of Jose Ramirez.)

Mr. Marcus: That is all.

Mr. Bender: Counsel, are you contending that this is not the substance that was received by the chemist in San Francisco?

Mr. Marcus: Let me suggest, counsel, that this is your burden, this is your case. I can't make the case for you. I am not going to stipulate that this is the same substance that this witness claims that he took from this party. I'm not going to stipulate that the substance that he took from this defendant is the identical stuff that is in that sack, because I don't know, and neither does the witness you have called.

Mr. Bender: But if you are contending that this is a link in the chain that is missing, that is not covered by the scope of our stipulation, then we can certainly produce the chemist, who will, I presume, testify that this is the substance he received from the Federal Narcotics Bureau.

Mr. Marcus: That is exactly what I stipulated to, that he received something.

The Court: He is not disputing about the chemist. The chemist would only testify that, in his opinion, the material [136] he examined was marijuana.

You're not disputing that?

Mr. Marcus: No, sir; I'm not. That is the stipulation.

The Court: He is disputing and putting the Government on proof to trace it to the defendant, and that is missing at this time by reason of the

(Testimony of Jose Ramirez.)

fact that this witness does not say positively that this is the same substance.

Mr. Marcus: He hasn't testified that this is the substance that he took from this party.

The Court: That is right.

Mr. Marcus: He hasn't testified that this is the identical substance that he sent to San Francisco. There is a link missing—there are two links, Judge.

The Court: Well, I said one. I don't know.

Mr. Bender: All right, what are those links?

Mr. Marcus: Counsel, I am just making an objection. This witness cannot testify—I'll assist you here, just mark it down—this witness has not testified that the substance contained in this sack is the identical substance that he claims he received from this defendant.

Mr. Bender: That isn't a link.

Mr. Marcus: That isn't a link?

Secondly, there is no evidence here that this is the same substance that was sent to San Francisco by this Agent.

Mr. Bender: Counsel, in lines 7 and 8 on page 1 of your [137] stipulation you say, "after having received said exhibit by registered mail from Agent Ramirez * * *" Are you not stipulating that this Exhibit 1, just identified by the Agent Ramirez, was the exhibit that was received by R. F. Love in San Francisco from Agent Ramirez?

Mr. Marcus: I am not disputing that. But you haven't laid the foundation that this witness knows that this is the same substance that he received from this defendant. There is where your link is missing.

(Testimony of Jose Ramirez.)

Mr. Bender: He knows it is the same substance.

Mr. Marcus: I asked the witness if that is the same substance that he took from this party; not whether it looks like it.

The Court: The court will ask him.

Is this the same substance that you took from the defendant?

The Witness: It is.

The Court: How do you know that?

The Witness: Because I did not remove any substance.

The Court: Did you mark it?

The Witness: No, sir. I marked the package. It is an impossibility to mark——

The Court: Did you put your initials on anything?

The Witness: I put my initials on these packages, on all of them. [138]

Mr. Marcus: Mr. Ramirez, you just testified a moment ago that you don't know whether that is the same substance or not. Didn't you tell me that in response to my question?

The Witness: The Judge worded it differently.

The Court: Straighten him out, then.

Mr. Marcus: Mr. Ramirez, tell us whether or not you can testify under oath that this is the same substance you took from the defendant?

The Witness: No.

The Court: You may proceed.

Q. (By Mr. Bender): Mr. Ramirez, before sealing and mailing the substance which you received

(Testimony of Jose Ramirez.)

from the defendant Lozoya, did you inspect the contents of any of those sacks? A. Yes; I did.

Q. Did you inspect the contents of all of them—look at them? A. Yes, I did.

Q. What did the substance appear to resemble?

A. It appeared to resemble marijuana.

Mr. Marcus: I move that that be stricken as calling for a conclusion, what did it appear to resemble? Your Honor, there is no foundation to establish the fact that he is competent to testify to what it looks like.

The Court: He is not positive. He said it appears like it. [139]

Mr. Bender: He is not testifying as an expert witness.

Mr. Marcus: Your Honor, I have seen marijuana many, many times—I have represented many, many clients with respect to matters of this kind, and I can't testify what it looks like.

The Court: Well, he is not testifying as a chemist. It goes to the weight and credibility. He just stated that it appeared like it.

Mr. Marcus: All right.

Mr. Bender: With reference to the other discussion, counsel, I am not certain I recall whether you acquiesced in my request or not, to this extent: That the burlap bag and all of the various smaller paper sacks containing initials are to be deemed to be Government's Exhibit 1 for identification.

Mr. Marcus: Yes, sir; I acquiesce in it and stipulate to it.

(Testimony of Jose Ramirez.)

The Court: All right.

Mr. Marcus: I am not making any objection to any technical matters here. This is the substance that I am objecting to. The objections I have made as to substance as to whether or not it is in the burlap bag or whether or not you put it in the burlap bag or whether or not it is considered one—I make no objection to that, counsel. I understand and stipulate for the record at this time that the burlap bag, the paper sacks contained and the paper carton are all your [140] exhibits and may be considered as such no matter what number or designation you give them. Is that understood for the record?

Mr. Bender: Yes. It appears, then, that the only thing, according to this approach that the Government has not tied in here is that the chemist would testify that he received this substance and that the identical substance remained in those various paper bags and that he returned the same substance and the same paper bags.

Mr. Marcus: I am not making that objection.

The Court: He is not claiming that. He is complaining, really, of your first link.

Mr. Bender: What is that, your Honor?

The Court: Well, that the substance that he took from the defendant in this case is marijuana and is the same substance that is here identified. I don't know, maybe I am injecting—I thought that was the point.

Mr. Marcus: That is the point exactly.

(Testimony of Jose Ramirez.)

The Court: You are not contending about the chemist?

Mr. Marcus: No; I have stipulated to that.

The Court: You are complaining of the link between the defendant and what is in the sack?

Mr. Marcus: Yes.

The Court: It is really what you call the corpus delicti.

Mr. Marcus: Right. [141]

Mr. Bender: Counsel, then if you are not complaining on that point, will you stipulate to that point?

Mr. Marcus: Please.

(There was an interruption at this point while the court took up another matter briefly.)

Mr. Bender: Counsel, I don't want to belabor the point, but I want to make certain that this portion has been stipulated to: That the contents of the various paper bags which are marked as a portion of Government's Exhibit 1 for identification contain the substance which R. F. Love would testify is marijuana.

Mr. Marcus: Well, let me say that I think that the stipulation speaks for itself. I make no issue with respect to what Mr. Love would testify to.

The Court: You have no disagreement with the stipulation. It is just the question of putting the Government to proof on this particular point?

Mr. Marcus: Right.

Mr. Bender: Your Honor, the Government an-

(Testimony of Jose Ramirez.)

ticipated that the scope of the stipulation covered the problem. If counsel does not agree to the statement I have just made, and that was the Government's understanding of what we stipulated to, and that being so and counsel doesn't agree that we stipulated to that, then we will have to call the chemist from San Francisco. [142]

The Court: It is not really necessary to call the chemist, under the stipulation, because under the stipulation Mr. Marcus is going to agree with you, Mr. Bender, that the substance that the chemist examined was marijuana.

Mr. Marcus: Right.

Mr. Bender: Well, will he further stipulate, and have we not stipulated, that the contents of those paper bags marked Government's Exhibit 1 is marijuana, in the opinion of R. F. Love?

Mr. Marcus: Yes, sir; there is no dispute as to that; he would testify under oath with respect to that.

Mr. Bender: That is what I asked you.

Mr. Marcus: Yes.

The Court: Well, we don't need to bring the chemist down. There is no dispute on that.

Q. (By Mr. Bender): Mr. Ramirez, are the burlap bags and the various paper sacks marked as Government's Exhibit 1 for identification only the material that the defendant Lozoya placed in the Government automobile on May 17th?

A. It is.

Mr. Marcus: Just a moment. That is objected to

(Testimony of Jose Ramirez.)

as assuming facts not in evidence. This witness has already testified that he does not know that the contents of the sacks is the same as the purported contents of the sacks that were placed in his car allegedly by this defendant. [143]

Mr. Bender: I will break it down to this extent, your Honor——

Mr. Marcus: That has been asked and answered.

The Court: Yes; that may go out, his last answer may go out.

Q. (By Mr. Bender): Mr. Ramirez, are the burlap bag and the paper sacks which you have identified with your initials on them and which are marked as Government's Exhibit 1 for identification only, are they the burlap bag and the various paper bags which you obtained from the defendant Lozoya on May 17th, 1956?

Mr. Marcus: That is objected to as assuming facts not in evidence, your Honor. He hasn't testified that he obtained it from the defendant at all.

Mr. Bender: He has.

Mr. Marcus: He testified that the defendant placed them in his car. He hasn't testified that he obtained them from the defendant.

Mr. Bender: One further question:

Q. Mr. Ramirez, are the burlap bag and the various paper sacks which you have identified as containing your initials and which have been marked as Government's Exhibit 1 for identification only the material which the defendant Lozoya placed in the trunk of the Government's automobile

(Testimony of Jose Ramirez.)

at the Beverly Ranch Market on May 17, [144] 1956?

Mr. Marcus: Just a minute, please, before you answer that.

Now, it is understood that this witness is simply testifying as to the containers, not the substance that is in the containers; is that correct?

Mr. Bender: Absolutely correct.

Mr. Marcus: I won't object to the question.

The Court: You may answer.

The Witness: Yes, it is.

Q. (By Mr. Bender): And at the time you examined the contents of the various paper bags, or at the time you examined the various paper bags, did they contain any substance? A. Yes.

Q. And you examined those on May 18, 1956?

A. I examined them on May 17th.

Q. And you examined them again on May 18, 1956? A. Yes; I did.

Q. Did they appear to contain the same substance which is presently contained in them?

Mr. Marcus: Just a moment. That is objected to as having been asked and answered.

The Court: I'll sustain the objection. That has been covered.

Q. (By Mr. Bender): Mr. Ramirez, the burlap bag and the various paper sacks which you have identified as containing [145] your initials, are those the ones which were placed by you in the box which is marked Government's Exhibit 1-B for identification? A. Yes, sir; they were.

(Testimony of Jose Ramirez.)

Q. Are they also the ones that you then mailed or caused to be mailed by registered mail to San Francisco? A. Yes; they are.

Q. To the chemist, to the Narcotics Bureau, to the Treasury Department in San Francisco?

A. Yes, sir.

Q. And to R. F. Love, the chemist, in San Francisco? A. Yes, sir.

Mr. Bender: At this time, the Government offers into evidence as Government's Exhibit 1-A the outer wrapping which enclosed the large box which is Government's Exhibit 1-B for identification.

Mr. Marcus: Will your Honor reserve ruling on this until at least we have a chance to cross-examine the witness?

The Court: All right; I will reserve the ruling.

Mr. Bender: And at the same time the Government offers into evidence as Government's Exhibit 1-B, the large paper carton box which contains Government's Exhibit 1.

The Government further offers into evidence Government's Exhibit 1, which consists of the burlap bag, the various paper sacks containing the initials of Agent Ramirez and the contents [146] of the various paper sacks, as Government's Exhibit 1.

The Government further offers into evidence, as Government's Exhibit 2, what has heretofore been marked as Government's Exhibit 2 for identification only and which is the stipulation of facts and order thereon.

Mr. Marcus: With respect to the stipulation of

(Testimony of Jose Ramirez.)

facts, your Honor, and the order thereon, there is no objection.

With respect to the other matters, we request the court to reserve ruling.

The Court: I will reserve the ruling on that.

(The exhibit heretofore marked Plaintiff's Exhibit 2 received in evidence.)

PLAINTIFF'S EXHIBIT No. 2

United States District Court for the Southern District of California, Central Division

No. 25033—CD—(Criminal)

UNITED STATES OF AMERICA,
Plaintiff,

vs.

REFUGIO GONZALEZ LOZOYA,
Defendant.

STIPULATION OF FACTS AND ORDER THEREON

It Is Hereby Stipulated by and between plaintiff, United States of America, and defendant, Refugio Gonzalez Lozoya, through their respective counsel, in the above-entitled action, that:

1. R. F. Love is duly qualified to examine and analyze narcotic drugs and to testify as an expert witness concerning their nature and identity.

(Testimony of Jose Ramirez.)

2. R. F. Love, if called as a witness at the trial of the above-entitled case, would testify under oath, and it be deemed that he has so testified as follows:

a. That he is a chemist employed by or acting on behalf of the Narcotics Bureau of the United States Treasury Department in San Francisco, California;

b. That in his employment in the course of his duties as a chemist he examined and analyzed Government's Exhibit No. 1 for identification (which will be identified by Narcotic Agent Jose Ramirez) after having received said exhibit by registered mail from Agent Ramirez and the Federal Bureau of Narcotics, Los Angeles, California;

c. That the analysis made by said R. F. Love reveals that in his opinion said Exhibit No. 1 for identification consists of approximately nine and one-half pounds of marijuana.

Dated: July 16, 1956.

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ JOSEPH F. BENDER,
Assistant U. S. Attorney, Attorneys for Plaintiff,
United States of America.

(Testimony of Jose Ramirez.)

/s/ DAVID C. MARCUS,
Attorney for Defendant.

It Is So Ordered:

This 18th day of July, 1956.

/s/ THURMOND CLARKE,
United States District Judge.

Admitted in evidence July 17, 1956.

Mr. Bender: The Government further requests that the court sign its approval of the stipulation of facts as Government's Exhibit 2.

The Court: There is no quarrel on that, is there, Mr. Marcus?

Mr. Marcus: No quarrel, your Honor.

The Court: I will just reserve the ruling on the one large package and the containers.

Mr. Bender: It is Government's Exhibit 1-B for identification and Exhibit 1.

The Court: Yes; you have offered them in evidence, and the court reserves ruling on them.

Mr. Bender: Also on the outer wrapping, Government's [147] Exhibit 1-A?

The Court: I don't think it makes a great deal of difference, but we might as well be consistent. We might as well have the outer wrapping, too.

Mr. Bender: Yes.

Q. (By Mr. Bender): Mr. Ramirez, you testi-

(Testimony of Jose Ramirez.)

fied concerning conversations with a man named Villas in the office of the United States Attorney on or about May 3rd, 1956. Subsequent to those conversations, or that conversation, what did you do with reference to the inspection of records or documents of the State concerning the man named Lozoya?

Mr. Marcus: That is objected to as being immaterial, what he did and what records or documents he examined.

Mr. Bender: Your Honor, counsel has stated that one of his defenses is the theory of entrapment.

Mr. Marcus: I haven't put on any defense at all yet, and I can change my theory and I don't have to adopt one. It makes no difference. That doesn't give counsel a right to anticipate what my defenses may happen to be.

The Court: I'll overrule the objection.

Mr. Marcus: Did he examine the State records, your Honor?

The Court: I'll overrule the objection. I'll allow him some latitude here.

You may answer. [148]

The Witness: Yes, sir. I went to the——

Q. (By Mr. Bender): What records—what did you do?

A. I went to the Sheriff's county identification and record division. I requested information on a person named Refugio Gonzales Lozoya, with his

(Testimony of Jose Ramirez.)

approximate age, his height and his weight. I was shown——

Mr. Marcus: Your Honor, this is obviously hearsay.

Mr. Bender: No, your Honor; that is exactly the point. The only possible objection that counsel for the defendant, from the Government's perspective, could make is that this more properly be presented in rebuttal.

Mr. Marcus: In rebuttal to what?

Mr. Bender: In rebuttal to a defense of entrapment.

Mr. Marcus: I haven't put on any defense yet. I don't understand how counsel at this time, with his experience, could anticipate what the defense may be and then in his case in chief introduce evidence in purported rebuttal of what we may use as a defense.

Mr. Bender: Counsel, you stated that one of your defenses would be entrapment and you went into cross-examination rather fully in an attempt to elicit the defense of entrapment. I asked you at the time if I was misconstruing or misunderstanding your intended purpose or your intended defense, and yesterday you advised me that one of your defenses was entrapment. You having gone into the matter on [149] cross-examination, having commenced to lay the foundation to set up a purported defense of entrapment, you have opened the door to us at this time to present this testimony.

Now, under any circumstances, it would be proper

(Testimony of Jose Ramirez.)

rebuttal testimony, and in the absence of a jury it appears, if the court in its discretion would be willing to entertain it now rather than calling this witness back, it appears to the Government that that is proper, you having opened the door to it.

Mr. Marcus: Please; I don't need any lecture on the trial of cases. I submit, your Honor, at this time that the defendant's plea of not guilty to a charge obviously permits him to cross-examine any witness on any theory of his case.

The Court: Well, the court has ruled. The court has sustained the objection. That is as far as I will let him go at this time.

Mr. Bender: You may cross-examine.

Recross-Examination

By Mr. Marcus:

Q. Do you have your files and records here pertaining to this case? A. No, sir; I don't.

Q. Where are they? A. Upstairs.

Q. Did you look at them this morning? [150]

A. No; I didn't.

Q. When did you look at them last?

A. Yesterday noon.

Q. You say you, personally, took this package to the post office? A. Beg your pardon?

Q. Did you, personally, take this package to the post office? A. Yes; I did.

Q. And you registered it, did you?

A. Yes.

(Testimony of Jose Ramirez.)

Q. Do you have the registration certificate at the time of mailing? A. Not here, sir.

Q. Do you have it, I asked?

A. I gave it to the secretary. I do not keep——

Q. Well, do you have it in your custody or available to you to show that you, personally, mailed this? You said that you, personally, registered that package? A. Yes, sir.

Q. You got a registered receipt at the time you registered it, didn't you? A. Yes, sir.

Q. Where is it?

A. Upstairs in the office of the Bureau of Narcotics. [151]

Q. Is it in your possession and under your control? A. No, sir.

Q. Well, what did you do with it?

A. I gave it to the secretary and she has a special place for it.

Q. Did you see it, actually see the registered card in the file of this case? A. No, sir.

Q. You don't even know whether there is a registered card, do you?

A. I received one from the postmaster.

Q. Then you do know there is a registered receipt? A. Yes; I do.

Q. After having registered that package, as you say you did personally, you requested a return receipt, didn't you? A. Yes, sir.

Q. Did you receive it back from San Francisco?

A. I do not know.

Q. You don't know, personally, whether or not

(Testimony of Jose Ramirez.)

that same package was received in San Francisco, do you? A. By what——

Q. Do you, please? Just answer yes or no.

A. I'm afraid I can't answer that question.

Q. Not having seen or received back a registered receipt card on this very package that you say you mailed, you don't [152] know whether or not it was actually received in San Francisco, do you?

A. I do not receive those receipts personally.

Q. Well, you signed for it; it was in your name, wasn't it? A. No, sir.

Q. When you registered it, it was registered in your name, wasn't it? A. No, sir.

Q. In whose name was it registered?

A. It was registered to the office of the Bureau of Narcotics, Room 1755.

Q. Well, you signed for it at the time, didn't you? A. No, sir; you don't sign anything.

Q. Well, I would like to see that card, if it is available to you, whether or not you actually signed for the registered package.

A. No, sir; you don't sign for it.

Q. Well, whether you do or don't, I would like to see that card. When you register a package in registered mail you sign your name, don't you?

A. No, sir.

Q. You didn't sign your name in this instance?

A. No, sir.

Q. Do you have that card? [153]

A. I do not have it here, no.

Q. Is it upstairs?

(Testimony of Jose Ramirez.)

A. I presume it is, yes.

Q. Will you examine your records and see if it is there? A. Yes, sir.

Q. All right, sir. Now, you testified yesterday afternoon that on October 2nd, 1955, you saw a yellow car driving around a corner; is that right?

A. No, sir.

Q. Didn't you testify that you saw a yellow 1941 Chevrolet automobile? A. No, sir.

Q. What did you testify to with respect to a yellow automobile?

A. I did not testify with respect to a yellow automobile.

Q. What color was it?

A. Light, cream-colored automobile.

Q. Light, cream-colored automobile?

A. Yes.

Q. Well, did you see one go around the corner, a light, cream Chevrolet automobile?

A. I saw one pass close to my car.

Q. Well, how many light, creamed automobiles have you [154] seen pass close to your car since October? A. I haven't kept track.

Q. Hundreds of them, haven't you?

A. I don't know.

Q. Well, have you seen any?

A. Not that I recall.

Q. But you definitely remember seeing one on October 5 of last year? A. Yes, sir.

Q. And you don't recollect seeing any since that time? A. No.

(Testimony of Jose Ramirez.)

Q. A light, creamed automobile?

A. No, sir.

Q. Now, Mr. Ramirez, as a matter of fact, you don't recollect seeing any cream-colored automobile pass near your car on October 5, 1955, do you?

A. I do.

Q. You do? A. Yes.

Q. All right. Let's just take this morning, for instance. You came to work in an automobile, did you? A. Yes, sir.

Q. Do you know that you passed any automobiles on the highway? A. Yes; I do. [155]

Q. Do you remember passing any of any distinct color? A. Yes; I do.

Q. You have a definite recollection of passing cars of different color this morning? A. Yes.

Q. Did you pass one of a light, cream color?

A. No, sir. I mean by that, I don't recall.

Q. That you don't recall?

A. I have one recollection of one car.

Q. Not being able to recall whether you passed a light, cream-colored automobile even as close as this morning, you are able to tell us, under oath now today, that last October 5 a cream-colored automobile passed your automobile; is that right? Do you want this court to believe that?

A. I do; yes, sir.

Q. Did you take a license number off that car?

A. No, sir.

Q. Did you make any record, any written record at all of that car passing you? A. Yes, sir.

(Testimony of Jose Ramirez.)

Q. Where is the written record?

A. It is upstairs in the office.

Q. When did you last look at that written record? A. Yesterday.

Q. Did you have to refresh your memory before testifying [156] from that written record of the yellow car passing you?

A. Cream-colored, sir.

Q. Or the cream-colored car? A. No, sir.

Mr. Bender: That is objected to on the ground that it is asking for a conclusion of the witness, what he had to do. He is asking for an opinion.

Q. (By Mr. Marcus): Well, did you?

The Court: He is reframing the question.

Mr. Marcus: I will reframe it.

Q. Did you examine the written record yesterday afternoon of that cream-colored automobile passing your car on October 5 in order to testify today concerning that subject?

A. October 2nd, sir.

Q. October 2nd?

A. I looked at the file, yes.

Q. That doesn't answer the question. The question is, did you require—— A. No, sir.

Q. Was it necessary for you to refresh your memory? A. No, sir.

Q. Do you remember where you were on October 5th? Do you remember where you were on October 5, 1955, without refreshing your memory; is that right, sir? A. October 2nd? [157]

Q. October 2nd.

(Testimony of Jose Ramirez.)

The Court: Well, I'll take a recess at this time.

Mr. Marcus: Would your Honor instruct him not to discuss his testimony when he leaves the stand until I have an opportunity to complete the cross-examination.

The Court: I will talk to Mr. Ely here and then we will go on.

(A pause.)

The Court: Go ahead.

Q. (By Mr. Marcus): Mr. Ramirez, as I understand your testimony is now that without refreshing your memory with respect to the events that occurred on October 2, 1955, you were able to testify from your memory?

A. Are you referring to specific events?

Q. I am referring to what transpired on October 2nd. You testified concerning a cream-colored automobile, concerning other events with one Villas. You testified that you did not need to refresh your memory from the written record that you claim that you have upstairs in your office, as to those events?

A. That is right.

Q. Am I able to gather from your testimony now that you have an independent recollection as to what occurred on October 2nd, 1955?

A. As to those events you mentioned, yes. [158]

Q. As to those events I mentioned. And you have a definite recollection with respect to conversations you had on that date; is that correct?

A. Not particular conversations, no.

(Testimony of Jose Ramirez.)

Q. Well, you testified yesterday from the witness stand that you had a conversation with Johnny Villas on October 2nd; do you recollect that?

A. No, sir; I don't.

Q. Didn't you testify that you met Villas out in West Whittier on October 2nd? A. Yes, sir.

Q. Do you remember now testifying to that?

A. To meeting him, yes.

Q. That is what I said, to meeting him?

A. No; you said "conversation."

Q. You had to have conversation with him to meet him. You met him out there? A. Yes.

Q. You remember your testimony yesterday even, didn't you? A. Yes, sir.

Q. And you had conversation with Villas at that time, didn't you? A. Yes, sir.

Q. With respect to that conversation are you able to [159] give it to us at this time without reference to any notes or memoranda? Yes or no.

A. Partial conversations, yes.

Q. You looked at it yesterday, didn't you?

A. No, sir.

Q. Didn't you examine the notes yesterday concerning events that occurred on October 2, 1955?

A. Only to the car.

Q. I am asking you if you didn't look at the notes? A. Only to the car.

Q. Did you look at the notes? Answer my question. A. What notes, sir?

Q. Didn't you tell us a moment ago that you made a written memorandum of the events that oc-

(Testimony of Jose Ramirez.)

curred on October 2nd? A. Yes, sir.

Q. Were you required to look at those notes yesterday in order to be able to testify today?

A. No, sir.

Q. Then you have an independent recollection, your memory serves you to the extent that you recollect what transpired on October 2nd; is that correct? A. Yes, sir.

Q. Without reference to any written memorandum or notation that you made at the time, sir?

A. Yes, sir. [160]

Q. All right. Now, you tell this court where you were on February 5th of this year.

A. I do not recall.

Q. Tell the court with whom you had conversation on February 5th of this year.

A. I do not recall.

Q. You mentioned the Rubio case yesterday, didn't you? A. Yes.

Q. Do you have a recollection of testifying in court at Calexico?

A. I have never been in Calexico.

Q. Where did you testify in court with reference to the Rubio case?

A. I have not testified to the Rubio case.

Q. Didn't you testify yesterday that you were the investigator on that case?

A. No, sir. I assisted in the case.

Q. Well, you assisted in what?

A. In the case, in the Rubio case.

(Testimony of Jose Ramirez.)

Q. In what way did you assist in the Rubio case? A. Surveillance.

Q. Where did this case take place—where did the facts develop on that case?

A. East Los Angeles.

Q. What day did you make the surveillance of that case? [161] A. I do not recall.

Q. Was that this year? A. Yes, sir.

Q. And you don't remember the date that occurred and you conducted the surveillance on it; is that right? A. That is right.

Q. You have a written memorandum of that case, haven't you? A. Yes, sir.

Q. And without reference to the date you are unable to testify? A. That is right.

Q. How long ago did it take place?

A. It took place in June.

Q. In June? A. Yes.

Q. Last month? A. Yes.

Q. And yet you come into this court and tell the court the substance of conversation with reference to a cream-colored automobile that occurred on October 2, 1955?

A. No, sir; I did not testify to that.

Q. You didn't testify to that? A. No.

Q. You didn't testify to a cream-colored automobile [162] passing your car on October 2, 1955?

A. Yes, sir.

Q. Isn't that what I asked you a moment ago?

A. No, sir; you said "conversation."

Q. You testified yesterday concerning conversa-

(Testimony of Jose Ramirez.)

tion you had with Villas on October 2 in West Whittier, didn't you?

A. Not the contents of the conversation; no, sir.

Q. Maybe you don't remember what you testified to yesterday, do you? Do you remember what you testified to yesterday? Just yes or no, please.

A. Yes, sir; I recall.

Q. I will ask you right now. A. Yes, sir.

Q. Do you remember what you said yesterday on this witness stand?

A. In regard to what?

Q. What you said in regard to everything, all your testimony—do you recall what you said?

A. I recollect part of my testimony.

Q. Part of your testimony? Do you recollect all that you said on this witness stand under oath yesterday? A. No, sir.

Q. And you tell us you remember what happened last October 2nd when you don't even remember what you testified to on this witness stand yesterday; is that right? [163]

Mr. Bender: Your Honor, the Government——

Mr. Marcus: That is all.

The Court: Do you want to ask him a few more questions?

Mr. Bender: Just one question, I believe.

(Testimony of Jose Ramirez.)

Redirect Examination

By Mr. Bender:

Q. Mr. Ramirez, any reference that counsel made to October 5, 1955, was that the date that you observed the 1941 Chevrolet?

Mr. Marcus: Counsel, he corrected me every time I said the 5th; he said the 2nd.

Mr. Bender: I want to make certain that on those questions and answers he meant October 2nd.

Mr. Marcus: Well, he corrected me every time by saying October 2nd.

Mr. Bender: Well, if he did, I don't recall the correction.

Mr. Marcus: That is correct.

Mr. Bender: No further questions of this witness.

Mr. Marcus: May this witness remain here, your Honor? May he be instructed not to converse with any of the other witnesses before they testify as to what he has testified on the stand?

The Court: Yes; we have all the witnesses excluded; so you are not to discuss your testimony with any of the other [164] witnesses.

The Witness: Yes, sir.

The Court: So don't discuss it with any of the other witnesses.

The Witness: Well, there are some matters I have to take care of.

(Testimony of Jose Ramirez.)

The Court: Well, you may talk with the attorney.

The Witness: I mean out on the street, sir.

The Court: Well——

Mr. Bender: Your Honor, this man is presently engaged in his practice and profession of being a Federal Narcotics Agent.

Mr. Marcus: About this case is all I want.

The Court: He doesn't want you to talk about this case, that's all.

Mr. Marcus: Concerning his testimony; that is all I limit it to.

The Court: That is all.

Mr. Bender: What is the full scope of that instruction?

The Court: Well, in other words——

Mr. Bender: To whom does it apply?

The Court: At Mr. Marcus' request, I excluded the witnesses. Then you asked that it apply to the defense witnesses. So I have excluded the witnesses. All Mr. Marcus wants now that he is leaving the witness stand, he doesn't want [165] him to tell the other witnesses what he has testified to.

Isn't that your thought?

Mr. Marcus: That is exactly it.

The Court: In other words, we want everybody to tell their own story and not be coaching any other witness.

Mr. Bender: Where does that end?

The Court: It ends when he leaves the witness stand.

(Testimony of Jose Ramirez.)

Mr. Bender: I object with reference to Mr. Marcus telling the other witnesses for the defendant Lozoya what this man testified to.

The Court: Well, if you get into all those things —it is just the witnesses. The attorneys are in a different situation. This rule applies to the witnesses in the case, and I made the ruling that any witness who was to testify here had to leave the courtroom, and we even had the wife of the defendant leave because it was questionable whether she would be a witness. So Mr. Marcus instructed her that she would have to go also. She didn't want to go. The purpose of excluding witnesses is so that they won't talk to one another.

Mr. Bender: I want to make it crystal clear in my own mind that it is permissible for me to discuss this case.

The Court: Certainly. You are entirely different. You are not a witness. I said witnesses.

Mr. Bender: Thank you.

The Court: Do you have another witness? [166]

Mr. Bender: I have to get him out of the other room. He was excluded, of course.

The Witness: Does that mean that I am confined to this courtroom?

The Court: Why don't we let him go and have him come back at 2:00 o'clock?

Mr. Bender: That presents another problem, in any event.

The Court: I don't know why I should become——

(Testimony of Jose Ramirez.)

Mr. Marcus: This witness is confusing matters here. The only instruction is that he not discuss his testimony with other witnesses. There is no restraint on his going out for lunch or talking to them or anything, but not to discuss his testimony in this case.

The Witness: Very well. That is clear enough.

Mr. Marcus: That is perfectly proper.

Mr. Bender: That is clear, your Honor. I understood that he asked that he remain, and that would bring up the further question as to whether he could take the stand again in rebuttal, having heard the testimony.

Mr. Marcus: He is the investigating officer. He has a right to remain with you and take the stand in rebuttal, counsel.

The Court: This happens every day.

All right.

(A recess.) [167]

Mr. Bender: The Government calls as its next witness Mr. Goodman.

Mr. Marcus: Your Honor, in the interests of time, I would be willing to stipulate that his testimony would be substantially to the same force and effect as the other witness.

Mr. Bender: It won't be in all particulars, your Honor.

The Court: All right.

MEYER I. GOODMAN

called as a witness for the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Meyer I. Goodman.

Direct Examination

By Mr. Bender:

Q. Mr. Goodman, what is your present profession or occupation?

A. I am an agent of the Bureau of Narcotics, the United States Treasury Department.

Q. For how long have you been so employed or engaged?

A. Well, throughout the United States for the past 17 years.

Q. Are you a graduate of a college of pharmacy?

A. Yes; I am.

Q. When did you graduate? [168]

A. I graduated from the Massachusetts College of Pharmacy in 1936 and continued graduate studies there for two years afterward.

Q. After you continued graduate studies, were you in any way connected with the field of chemistry? A. Yes; I was.

Q. In what manner?

A. I was a teacher and instructor of chemistry for approximately two years, and including chemistry, pharmaceutical chemistry, analytical chemistry, all the other phases and connected and related sciences in connection with my work.

(Testimony of Meyer I. Goodman.)

Q. In connection with your background as a chemist, have you had an opportunity to make analyses of the chemical content of narcotic drugs?

A. I might answer that to say that most of my examinations, and I would say they were probably over a thousand different occasions, have I examined physically—not chemically. That was the job of the chemist, actually. But physically the examination of it: Appearance, texture, odor, color; I have become very familiar, I would say, with the marijuana plant and——

Q. And with your experience as being a chemist, is a physical analysis one of the methods of ascertaining the chemical content of a substance— [169] strike the word "chemical"—whether a substance is marijuana or not?

A. Yes; it is, very often, prior to its submission to the chemist for final chemical analysis; usually in all cases it is examined physically for appearance, texture and identification.

Q. Then would a chemist also employ the physical analysis of the material?

A. Oh, yes; all the time before he conducts his chemical analysis.

Q. Then is the purpose of the chemical analysis merely to confirm his physical analysis?

A. That is exactly so.

Q. Directing your attention to on or about May 17, 1956, at approximately 7:00 o'clock in the evening or a little later, were you at that time and on that date in the vicinity of the Beverly Ranch

(Testimony of Meyer I. Goodman.)

Market in Montebello, California? A. I was.

Q. Was anyone with you at the time?

A. Yes. Agent Cantu, of our Bureau of Narcotics, and Agent Miller were with me directly across the street from the Ranch Market.

Q. Where were you located—in other words, was it——

A. We were located in a service gas station—I believe it was a 76 station, although I didn't pay particular [170] notice of that—near the parking area of the gas station. We were outside of Agent Cantu's government vehicle, and we had the hood open of the car and were allegedly examining the motor of the car.

Q. Before this time, in other words, before May 17th, at 7:00 o'clock, had you been shown any pictures by Agent Ramirez?

A. I believe Ramirez showed me a picture of the defendant Lozoya.

Mr. Marcus: I move that that be stricken, your Honor.

The Court: That may go out.

Q. (By Mr. Bender): What did Ramirez show you?

A. He showed me the photograph of an individual.

Q. Had you ever seen that individual before?

A. I never had; no, sir.

Q. Is that individual present in court today?

A. Yes, sir.

Q. Who is he?

(Testimony of Meyer I. Goodman.)

A. He is the defendant here, this gentleman here, with the glasses on, behind the—with the light shirt on.

Mr. Bender: Mr. Lozoya, will you stand, please?

(The defendant stands.)

Q. (By Mr. Bender): Is this the man you mean? A. That is the man.

Q. Directing your attention now back to May 17th, [171] some time after 7:00 o'clock in the evening, what occurred at that time?

A. At that time Agent Cantu and several other officers and I went to the vicinity of the Beverly Ranch Market and we drove into the gas station, as I said. directly across the street from the parking lot of the market, and at about 7:30 or so—well, Agent Ramirez was across the street parked in a government vehicle, in a car, in his government car, and was just sitting there, and at about 7:30 I saw the defendant, Mr. Lozoya, drive into the parking lot in a, I believe it was a 1940 Chevrolet sedan, which had previously been described to me, and stopped his car in front of the one in which Agent Ramirez was seated. I saw the defendant Lozoya get out of his car and walk over between the space where his car was and where Ramirez was, and Ramirez got out of his car and they spoke together for a moment.

I then saw Lozoya get back into his car and back it into a parking space directly next to Agent Ra-

(Testimony of Meyer I. Goodman.)

mirez' car. He then got out of the car again and there was a brief conversation further.

I then saw Lozoya go to the trunk of the Chevrolet he had driven and open it and take a burlap sack out of the trunk of the car. I then saw him transfer the burlap sack to the trunk of Agent Ramirez' car.

Ramirez, in the meantime, had walked over and opened the [172] trunk of the black Mercury, and at that moment when the transfer was made, I and several other officers ran up to the defendant, identified ourselves to him and told him he was under arrest.

I then had a conversation with the defendant at that time, at that place.

Q. What was said? A. I asked him——

Q. The defendant Lozoya?

A. The defendant Lozoya—I asked him where he had obtained the burlap sack containing the marijuana, and he replied, "I don't know what you are talking about."

And I again asked him the same question, "I'm talking about the burlap sack that you just transferred from the trunk of your car to the trunk of the government car," and he said, "You're mistaken. I didn't take anything out of the trunk of my car."

I said, "I'm not mistaken. I saw you just take the sack out of your car."

He said, "What sack are you talking about?"

My exact words at that time were—I said to Ra-

(Testimony of Meyer I. Goodman.)

mirez, "Open the trunk of that black Mercury and get the God damn sack out." And with that we took the—I think it was Agent Gullen and I reached over and pulled the sack out of the trunk of the Mercury and held it for a moment, and I said, [173] "This is the sack I am talking about."

Q. To whom did you say that?

A. I said that to Lozoya.

Q. How far was he from you?

A. He was standing right beside me.

And he said, "I don't know what you're talking about. I never saw that sack before."

After that, we then took him to the Federal Building. We had no further conversation—I didn't have any further conversation with him.

Q. You say that the defendant Lozoya was taken to the Federal Building. Was he actually in your custody on the way to the Federal Building?

A. No, sir; he was in the custody of—he got into the car driven by Agent Gullen and I think Agent Miller took him to the building, whereas I took custody, together with Ramirez, we both got into the black Mercury sedan with the sack of marijuana and went to the Federal Building behind the defendant.

Q. At the Federal Building did you make any inspection or examination of the sack which you testified you saw the defendant Lozoya remove?

A. Yes; when we got the burlap sack upstairs to the office of the Bureau of Narcotics, I removed the paper bags, opened several of them and ex-

(Testimony of Meyer I. Goodman.)

amined the contents. They had [174] different weights. We weighed a number of them at that time preliminarily on the scales that were in the room and examined the contents, and found them to be the material which is well known to me as marijuana.

Mr. Marcus: Just a moment. May that be stricken on the grounds, first, that it is nonresponsive, and, second, there is no foundation for the receipt of that evidence, your Honor?

Mr. Bender: Your Honor, so far as the ground of being nonresponsive, in the Federal Court in a case Judge Mathes ruled on, 106 Fed. Supp., I believe it is the Schneiderman case, the objection that it is not responsive is not a proper objection except by the attorney asking the question.

The Court: I will overrule the objection.

Q. (By Mr. Bender): Mr. Goodman, did you examine the contents of the paper sacks that you say were contained in the burlap bag?

A. I did.

Q. Which you took, which was in the Federal Narcotics office on or about May 17, 1956?

A. I did.

Q. Do you have an opinion concerning what substance was contained in these paper sacks?

Mr. Marcus: That calls for only a yes or no answer.

The Witness: I do. [175]

Mr. Marcus: I object to the question now on the grounds that there is no foundation for his opinion.

(Testimony of Meyer I. Goodman.)

Mr. Bender: Your Honor, this man has testified that he graduated from a college.

Mr. Marcus: I understand what he has testified to, but he has not laid the foundation yet with respect to his qualifications to pass upon the substance. He has only testified that he gave it a physical examination by looking at it. I don't even know that he has testified that he gave it a microscopic examination, which is part of the physical examination.

The Court: I will overrule the objection. I'll let him testify.

Mr. Marcus: I understand that that will simply go to the weight?

The Court: That is right.

Q. (By Mr. Bender): In your opinion, Mr. Goodman, what substance was contained in the paper sacks that we have been discussing?

A. In my opinion, the substance is marijuana.

Mr. Marcus: I move, for the purpose of the record, that it be stricken on the grounds that there is no proper foundation, your Honor.

Q. (By Mr. Bender): What examination——

The Court: All right. [176]

Mr. Bender: Excuse me.

The Court: Go ahead.

Q. (By Mr. Bender): Upon what do you base this opinion?

A. I base this upon the physical examination, the odor, the texture, the color of the leaf, the shape and the type of leaf that marijuana is known to

(Testimony of Meyer I. Goodman.)

have, and the comparison of this material with a very great number of other samples of known marijuana that I have been in contact with during the past 17 years.

Q. Did you also rely upon your education and training?

A. Yes, sir. All these factors taken together.

Mr. Bender: You may cross-examine.

Cross-Examination

By Mr. Marcus:

Q. Did you ever testify in court as an expert forensic chemist?

Mr. Bender: Excuse me, your Honor, and counsel. I have one or two further questions.

The Court: All right.

Direct Examination
(Resumed)

By Mr. Bender:

Q. Mr. Goodman, I direct your attention to Government's Exhibit 1-B for identification—that is the large carton paper container, and in particular to Government's Exhibit 1 for identification, which consists of a burlap sack and various [177] paper sacks and their contents, and ask you if you have seen them before? The question relates to Government's Exhibit 1 for identification only.

A. Yes; my initials are on here—M.I.G.

Q. On where?

(Testimony of Meyer I. Goodman.)

A. On the paper sacks. Here they are again—M.I.G.

Q. At the time you placed your initials on the paper sacks, did the paper sacks contain any substance? A. Pardon.

Q. At the time you placed your initials on the paper sacks, which are Government's Exhibit 1 for identification only, did those sacks contain any substance? A. Yes; they did.

Q. What substance, in your opinion, did they contain? A. They contained marijuana.

Q. Would you look into the paper sack at this time and tell us if the substance contained in them at the present time appears to resemble the substance which was contained in that paper sack at the time you placed your initials on them?

Mr. Marcus: I object to the question on the grounds that there has been no identification of this substance contained in these sacks here today to be the same substance he saw at that time.

Mr. Bender: I am asking him if it appeared to resemble.

Mr. Marcus: That it appeared to resemble is no probative [178] evidence. It certainly doesn't establish any corpus delicti. One piece of wood may resemble another, but that doesn't mean it is the same.

The Court: I'll overrule the objection. He may answer.

The Witness: This material resembles the same material that I saw on May 17th.

Q. (By Mr. Bender): I notice that when you

(Testimony of Meyer I. Goodman.)

were looking at it just now you appeared to sniff at, look at it. In your present opinion is the material contained in Government's Exhibit 1, the paper sack you looked at, is it a narcotic? Is it marijuana? A. It is.

Mr. Bender: At this time, the Government moves to introduce in evidence Government's Exhibits 1-A, 1-B and 1 for identification only as Government's Exhibits 1-A, 1-B and 1.

Mr. Marcus: Well, will your Honor reserve ruling respecting the receipt of this until I cross-examine the witness?

The Court: All right; the court will reserve the ruling.

Mr. Bender: That is all.

Cross-Examination

By Mr. Marcus:

Q. I understand, sir, that you went to a pharmacy school? A. That is right.

Q. What pharmacy school did you go to? [179]

A. Massachusetts.

Q. What is the name of the school?

A. Massachusetts College of Pharmacy.

Q. What pre-education did you have prior to going to Massachusetts School of Pharmacy?

A. The usual high school, elementary school and so forth.

Q. Did you graduate from high school?

A. Of course. That is one of the requirements.

(Testimony of Meyer I. Goodman.)

Q. What high school did you graduate from?

A. From the Dorchester High School.

Q. Then you went directly from high school to this pharmacy school? A. That is correct.

Q. What year was that? A. 1936.

Q. And you attended pharmacy school for how long?

A. I entered in '32. I graduated in '36.

Q. As a pharmacist, is that correct?

A. That is correct.

Q. Did you graduate as a forensic chemist?

A. There is no such thing as a graduate in forensic chemistry.

Q. My question is, did you graduate as a forensic chemist? [180] A. There is no such thing.

Q. There is no such thing as a forensic chemist?

A. Nobody graduates as a forensic chemist.

Q. You know what a forensic chemist is?

A. Yes.

Q. What is a forensic chemist, in your opinion?

A. A chemist.

Q. That is your understanding of the term "forensic chemist"? A. That is true.

Q. That he is a chemist? A. Yes.

Q. Isn't it a fact that a forensic chemist is entirely different from the ordinary chemist?

A. Well, there is a slight difference. A forensic chemist is familiar with certain other materials, that's all.

Q. Just a moment. My question is, is there not

(Testimony of Meyer I. Goodman.)

an entirely different distinction between a forensic chemist and an ordinary chemist?

A. Not entirely different, no.

Q. Did you graduate as a chemist even? Yes or no? A. The term is "pharmacist."

Q. Please answer my question? Did you graduate as a chemist?

A. Well, it can be answered yes and no. [181]

Q. You graduated as a pharmacist, didn't you?

Mr. Bender: Your Honor, the Government interposes the request that the witness be permitted to explain his answer. He says he can't answer yes or no.

The Court: All right, let him explain.

Q. (By Mr. Marcus): My question is, did you graduate as a chemist?

A. Yes and no. I cannot answer.

Q. What was your degree when you graduated?

A. Bachelor of Science.

Q. What is the degree of a chemist, when a person graduates as a chemist?

A. Bachelor of Science.

Q. Bachelor of Science? A. Sure.

Q. As I understand, you were an instructor in pharmacy? A. And chemistry.

Q. For two years?

A. About two years, roughly.

Q. What school?

A. For awhile at the Massachusetts College of Pharmacy, in the Department of Chemistry, in organic and general chemistry, and then about an

(Testimony of Meyer I. Goodman.)

additional year at the Middlesex University, at Waltham, Massachusetts. After that I instructed in chemistry and materia medica at the Nurses Training School [182] at the Medfield State Hospital, at Medfield, Massachusetts.

Q. Let's start at this Nurses Training School in Medfield, Massachusetts, sir?

A. That's right.

Mr. Marcus: Could you remove this box, because I can't see this witness' features.

The Court: Yes. Put it there in the jury box.

Q. (By Mr. Marcus): Did you instruct at the Medford School of Nurses? A. Medfield.

Q. Medfield School of Nursing, on marijuana?

A. No, of course not.

Q. When you instructed at the other school, did you instruct on marijuana?

A. My entire——

Q. Did you instruct on marijuana? Yes or no?

A. Not at those schools; only when I was with the Bureau of Narcotics.

Q. We will come to that, please. In your training as a pharmacist, did you instruct on the subject of marijuana?

A. Yes, in training as a pharmacist at the College of Pharmacy, one of my lessons to my class was the identification and the appearance of the cannabis plant.

Mr. Marcus: All right.

The Court: Just a moment. [183]

(An interruption.)

(Testimony of Meyer I. Goodman.)

Q. (By Mr. Marcus): Mr. Goodman, as I understand, sir, the only thing you did at the time was to look at the package?

A. To look at the contents, smell it, examine its texture and so forth—physical examination.

Q. Yes, sir. And I understood you to say that the texture of the leaf——

A. The leaf, the stalk, the seeds, all very important to the identification.

Q. And based upon that examination you are of the opinion that it was marijuana?

A. Yes, sir.

Q. What does marijuana resemble, what other plant?

A. I don't think it—I think it is very distinctive.

Q. It resembles no other plant; is that right?

A. In my opinion, it doesn't. It is a very distinctive plant.

Q. It has very distinct characteristics of its own and it doesn't resemble any other plant; is that correct? Is that your opinion?

A. It is very distinct from all others, in my opinion.

Q. You didn't even look at it through a microscope, did you? A. No, I didn't. [184]

Q. That is a physical examination, too, with the microscope—the microscopic examination?

A. That is usually done by the chemist.

Q. You were able to tell the texture of the leaves by physical observation?

(Testimony of Meyer I. Goodman.)

A. From comparing it with many other examinations.

Q. I didn't ask you about comparing it with something else, because you didn't compare it at that time with anything else, did you?

A. With my memory.

Q. With your memory? A. Yes.

Q. But my question is, you didn't compare it at that time with any other leaf of known variety of marijuana, did you? A. I did not.

Q. You just looked at it, didn't you?

A. That is correct.

Q. And you could tell from the leaf, the texture of the leaf at the time that it was marijuana; is that right?

A. It was my opinion that it was.

Q. Are you sure of it?

A. Of my opinion?

Q. Are you sure that it was marijuana?

A. Yes, I am sure. [185]

Q. I am going to put this out here in front of the Judge. I'll just take it out at random out of this sack, and you show the Judge here how you examined the texture of the leaf by just looking at it?

A. You see these seeds?

Q. I see the seeds. I'm not talking——

A. Didn't you ask me a question, sir?

Q. I asked you to examine it——

A. Will you permit me to answer it?

Q. You just listen to me. I'm asking these ques-

(Testimony of Meyer I. Goodman.)

tions. You show the Judge the texture of the leaf that you examined in the marijuana?

A. The leaf in its fresh, new form has a certain characteristic. But the way we seize marijuana, and I have been at a number, oh, hundreds of seizures, this is exactly the way it appears in all cases, with the tiny seeds, your Honor, attached to the stalk. When you just shake it, you can see the seeds——

Q. Where are the seeds? Let's not get into any discussion about it. I want you to show the Judge——

Mr. Bender: You asked him.

The Court: Well, wait just a minute. I don't want the marijuana seeds on the court's bench. I am going to get it off of here right away. I don't want to be charged with possession. [186]

Q. (By Mr. Marcus): I want you to show the court the texture of the leaf that you say you examined at the time. A. Did you smell it?

Q. I'm not talking about the smell.

A. The odor is one of the most characteristic things. That's what I am trying to tell you.

Q. I'm trying to tell you that you testified before that you examined the texture of the leaf. Do you see any texture of any leaf?

A. Well, if it was an original leaf——

Q. Oh, let's not get argumentative at this moment. I'm asking you do you see any texture of any leaf on that piece of paper? Yes or no?

A. I can answer you that in my experience that

(Testimony of Meyer I. Goodman.)

is marijuana. That is the only way I can answer you.

Q. You see, I am testing what you know about marijuana.

A. I know a great deal about it, sir, I assure you.

Mr. Marcus: I move that be stricken, your Honor.

The Court: Yes.

Mr. Marcus: The Judge will pass upon your knowledge.

The Witness: I'm sure he will.

Q. (By Mr. Marcus): You testified that you examined the texture of the leaf.

A. The odor, the texture, the seeds, the appearance—everything about it. [187]

Q. Do you see any texture in any leaf there?

A. Will you explain what you mean?

Q. I'm asking the questions now.

A. I don't understand what you mean.

Q. You testified that you examined the texture of the leaf? A. Yes, the feel of it.

Q. Do you see any leaf there?

A. This is a dried leaf, for your information.

Q. I understand. Isn't it in this same condition that it was in when you got it or saw it?

A. Identical.

Q. Do you see any texture of the leaves there?

A. Sure I do.

Q. Show the court where you see that texture of a leaf.

(Testimony of Meyer I. Goodman.)

A. Your opinion of a dried leaf and mine is different. This is all shriveled up. This is just the way it appears when we seize them.

Q. You don't see any texture of any leaf there at all, do you?

A. It is a matter of opinion what I see.

Q. Do you see any texture of any leaf?

A. This is a dried leaf.

Q. Answer my question.

A. I don't know what it is. [188]

Q. Do you see any texture of any leaf in front of you? Yes or no?

Mr. Bender: Just a moment. The Government objects to the question.

The Court: He may answer.

The Witness: You don't see a texture. As I understand it, the texture is the feel of something. You don't see texture.

Q. (By Mr. Marcus): Do you see any leaves there at all? A. Yes, I do, dried leaves.

Q. You see dried leaves?

A. That is right.

Q. Do you see any texture to those dried leaves?

Mr. Bender: What do you mean by "texture"?

The Witness: I don't understand what you mean by "texture."

Mr. Marcus: I'm not answering the questions. Please be seated.

Mr. Bender: The Judge advises the attorneys to be seated.

Mr. Marcus: Well, don't interfere with my examination. I don't have to answer your questions.

(Testimony of Meyer I. Goodman.)

The Court: Well, let's proceed.

Q. (By Mr. Marcus): Is this the same object that you saw on May 17th? Just yes or no?

A. This is identical with the object that I [189] saw.

Q. All right. Being a chemist, tell this court how many chemical tests you can subject this——

Withdraw that.

You being a chemist, tell this court what chemical analysis you can make of marijuana to determine for sure whether it is marijuana?

A. Oh, a number of tests can be made.

Q. How many?

A. I don't know how many. Probably at least four or five anyway that can be done. I don't conduct those, sir. I'm very sorry.

Q. You just name one chemical test?

A. Well, it can be submitted to——

Q. I know where it can be submitted. You tell me the name of the chemical test that you subject marijuana to, to determine whether or not it is marijuana?

A. There are a number of things that can be done.

Q. Can you give one?

Mr. Bender: I ask that the witness be permitted to finish his answer before counsel repeatedly interrupts, your Honor.

Q. (By Mr. Marcus): You just name one chemical test. Give me the name of it.

(Testimony of Meyer I. Goodman.)

A. One of them that can be done very rapidly is to ad a little bit of diluted acid to it, you [190] see.

Q. Add a little bit of what?

A. Diluted acid.

Q. What acid?

A. A little hydrochloric, a little sulfur—won't make any difference. As a result of that, you see the leaf has tiny glandular hairs attached to the bottom of it.

Mr. Bender: Excuse me, your Honor——

Mr. Marcus: I'm asking the questions.

The Witness: I'm trying to answer.

Mr. Bender: The Government requests that counsel refrain from interrupting when he is answering the question.

Mr. Marcus: I asked him to state the name of a chemical test.

The Witness: I'm telling you.

Mr. Marcus: He claims to be an expert. I want him to name one chemical test.

The Witness: I do not conduct chemical tests. That is the job of the United States Chemist. But it just so happens that my training is the type that I have knowledge of these things, and I tell you that a diluted acid can be added to this material, when the diluted acid comes in contact with the carbonate which is deposited in the tiny hairs on the undersurface of these marijuana leaves, any individual can tell you that when diluted acid comes in con-

(Testimony of Meyer I. Goodman.)

tact with a carbonate carbon dioxide gas is emitted, which rises to the top in a [191] small bubbly appearance—that can be seen with the naked eye. That is one of the various significant tests of marijuana.

Q. Yes, but you never gave it that test?

A. No, I told you I never did.

Q. All right. Now you give me the common name that is used by a forensic chemist to test for marijuana—just give me the name of it?

A. Well, this is one of them.

Q. Well, what is the name of it?

A. The carbon dioxide test.

Q. The carbon dioxide test?

A. Yes, diluted acid test.

Q. As a matter of fact, you don't know what you're talking about; isn't that a fact?

A. I don't understand you.

Q. Isn't it a fact that you don't know what you're talking about when you say you administer hydrochloric acid to marijuana to get a test?

A. You asked if there were a number of tests. I said yes. This is one of them that can be performed. There are others. There are others with anil-alcohol, which gives a blue color test.

Q. What is it? Wait a minute now. What is it? Amyl alcohol? [192]

A. Yes, amyl alcohol is used sometimes.

Q. Amyl alcohol. What else?

A. There are other chemical names that I'm not familiar with because I don't conduct chemical tests,

(Testimony of Meyer I. Goodman.)

Q. As a matter of fact, Mr. Goodman, you have never conducted a chemical test to ascertain whether or not a substance is marijuana?

A. Yes, I have.

Q. What tests?

A. Back in New York we conducted chemical——

Q. What tests?

A. The sulfuric acid test.

Q. The sulfuric acid test?

A. The hydrochloric acid test. We take a little marijuana sample, put it under a cover slip of under a microscope, and a drop or two of hydrochloric, sulfuric, acetic, any acid. When they come in contact with the leaves, they liberate carbon dioxide from the carbonate which is deposited and it can be seen with the naked eye. I have done that many times.

Q. I understand you to say, sir, that there is a little hairy substance on the leaf of this marijuana?

A. On the under side.

Q. And it can be only ascertained microscopically; isn't that right? Didn't you just say that a minute ago? [193]

A. I didn't say it can only be ascertained; that's the usual way to ascertain it. It's too small to see with the naked eye.

Q. Well, if it's too small to see with the naked eye, tell this court how you're going to see it without looking at it with a microscope?

A. The hair you mean?

(Testimony of Meyer I. Goodman.)

Q. Yes.

A. You can't see it without a microscope.

Q. You can't see it without a microscope, and that is called a microscopic examination?

A. Yes. The microscopic examination is for the examination of the leaf and the hair. That is true.

Q. Have you ever testified in court as an expert forensic chemist?

A. I have testified as an expert in narcotics for the Government.

Q. My question wasn't whether——

A. No, I never have.

Q. ——whether you testified as an expert in narcotics for the Government. My question is whether or not you ever testified in court as an expert forensic chemist?

A. No, I never have, sir.

Q. I am going to ask you this question: Did you ever hear of the Duquenois test? [194]

A. I have heard of it.

Q. What is the Duquenois test?

A. I really don't recall offhand. I don't recall. I read it once—I read the method once.

Q. Where did you read it once?

A. In some of the material that were sent down from the United States Chemist at various times.

Q. Did you ever subject a substance that you believed was marijuana to the Duquenois test?

A. I was present when it was performed once.

Q. Do you have a recollection of the test that was performed under this so-called Duquenois test?

(Testimony of Meyer I. Goodman.)

A. Very vague. The United States Chemist could tell you about it.

Q. I know they could tell me very much about it.

A. Sure.

Q. Do you consider yourself to be a forensic chemist? A. Well, I am——

Q. Yes or no? Please don't argue.

Q. If you don't practice it, you are not a forensic chemist?

Q. If you don't practice it, you are not a forensic chemist?

A. I suppose you would say I am not.

Q. And a forensic chemist is a person who subjects these plants, these various organisms to different tests to ascertain [195] what their contents are; is that correct? A. Yes.

Q. So not being a forensic chemist, you, you wouldn't even know how to perform the Duquenois test, would you?

A. Oh, sure, very simple to perform it.

Q. You say you know how to perform the Duquenois test, do you?

A. Very, very simple thing.

Q. Answer the question. Yes or no?

A. Yes, I could perform it, positively. You could perform it.

Mr. Marcus: Will you mark this place in the record, Mr. Reporter.

Q. Tell us, now, how you would perform the Duquenois test.

A. I would go to the text book which had the

(Testimony of Meyer I. Goodman.)

directions to perform it, because any scientist or any chemist, anybody at all, would go to a reference for the directions in it, just like baking a cake, and you go ahead and do it and get the result you want. That's all.

Q. And you call yourself an expert by telling us you would go to a book on chemistry to find out how to do the test?

A. Any scientist goes to a reference, any good scientist goes to a reference before he goes ahead with it, sure. [196]

Q. Do you know these Duquenois tests are performed two, three, four, five times a day by the forensic chemist of the Sheriff's Office?

A. Of course, they do.

Q. You know that?

A. We don't do that. We have the United States Chemist for that. I'm trying to tell you that. That is not my job.

Q. Yes. You have the United States Chemist to ascertain whether or not the substances are marijuana or whether or not they are any other substance, don't you?

A. I thought that was stipulated.

Q. That was stipulated, but you took the stand to testify as an expert.

A. From appearance alone.

Q. Oh, now I understand you are only testifying from appearance alone? A. Yes.

Q. But you testified that in your opinion you were an expert chemist, didn't you?

(Testimony of Meyer I. Goodman.)

A. I am an expert for 17 years of narcotics and my training as a pharmacist.

Q. You are an expert because you say you looked at it and smelled it? A. Yes. [197]

Q. And therefore you are of the opinion that it is marijuana? A. Yes, sir.

Q. Why, before these matters, to your knowledge, are brought to court, the expert forensic chemists examine them and subject them to the Duquenois test, don't they? A. That's true.

Q. You never performed the Duquenois test in your life, did you?

A. I was present at the time a chemist performed several of them.

Q. Well, I was under the impression——

A. I never had the occasion to do it.

Q. All right, why don't you just answer without giving us a dissertation?

A. Well, that's what I'm trying to tell you.

Q. All right, what other tests are there, what other chemical tests are there to subject marijuana to?

A. There are others. I don't recall. I don't carry them in my mind.

Q. You see, I'm not asking you to guess, I'm testing your qualifications. I want to know if you know any other chemical test besides the Duquenois test. A. The Duquenois test——

Q. I'll tell you what they are in a minute. [198]

A. The Duquenois test I have heard of, the acid test, the carbonate test—those are all tests. There

(Testimony of Meyer I. Goodman.)

are probably others. I have heard of four or five. I don't remember them.

Q. Oh, you don't know any chemical tests, do you? Just be frank with us.

A. I am very frank with you, sir.

Q. You didn't even know there was such a thing as a Duquenois test, until I told you?

A. Well, I was present when a Duquenois test was conducted on a number of occasions by the chemist.

Q. Isn't it a fact that there are certain colors emitted when the substance that is marijuana goes through the Duquenois test?

A. That is a color test.

Q. Please answer the question.

A. Yes.

Q. Isn't it a fact that it goes through different tests? A. Yes.

Q. Now, taking it a step further, what other things are emitted when it goes through the Duquenois test?

A. I don't recall offhand. I would have to go to the reference.

Q. You don't know anything about the Duquenois test, do you? [199]

A. Where did you get your information about the Duquenois? You went to a reference, did you not?

Q. If you want to know, Mr. Goodman, I'll tell you. I've tried hundreds of these cases. I know the Duquenois test. I know the other tests that are in-

(Testimony of Meyer I. Goodman.)

volved, but I'm not going to tell you. If it will be of assistance to you, I'll tell you at some other time. Now, sir, are you testifying now that this is identically the same substance as you saw on May 17th?

A. This is identical in appearance—I only examined the appearance—to the substance that I saw on May 17th. That's all I'm trying to tell you.

Q. Is it the same substance that you examined on May 17th? A. It appears to be, yes.

Q. That isn't what I asked you.

A. That is all I can state, that it appears to be.

Q. Then you don't know, do you, that this is identically the same substance?

A. Well, this is the material that was in the bags that was mailed to the chemist by registered mail.

Q. You never mailed it, did you?

A. No, it was mailed by one of the other officers, probably Agent Ramirez.

Q. Now remember, you're under oath, you don't know [200] whether it was mailed or not, do you?

A. I believe it was.

Q. Now, let's get back to what happened on the night of May 17th. What time did you arrive there?

A. About 7:00 o'clock p.m., I would say.

Q. Who came along with you?

A. I was with one of the other officers. I think it was Miller. I am pretty sure it was Miller.

Q. Are you sure it was Miller? A. Yes.

Q. How did you arrive there at that time?

(Testimony of Meyer I. Goodman.)

A. In a car.

Q. What kind of a car did you drive in?

A. It was a Buick.

Q. A Buick automobile? A. Yes.

Q. What model? A. It was a 1954 Buick.

Q. Was it a sedan or a convertible?

A. It was a sedan.

Q. Was that a government car?

A. Yes, sir.

Q. Just the two of you came there together?

A. Just he and I. We met other officers there.

Q. You say you went into the service [201] station?

A. Yes, we drove into the parking area of the service station.

Q. This was across the street from where this large market was located, wasn't it?

A. That is right.

Q. Was it across the street from where the parking lot was? A. That is correct.

Q. How long did you wait there before you saw Agent Ramirez?

A. Agent Ramirez was there when we arrived. He was parked in his car.

Q. How long was it before you actually saw him there? A. A minute or two, I would say.

Q. Was he in his car or was he outside the car when you first saw him?

A. When I first saw him he was in the car.

Q. What was he doing at the time you saw him?

A. Sitting at the driver's wheel.

(Testimony of Meyer I. Goodman.)

Q. Was he doing anything besides sitting?

A. I don't recall him doing anything special. He might have been eating some fruit or something. I don't know.

Q. He might have been eating some fruit?

A. As I recall, he was eating some fruit.

Q. What kind of fruit was he eating? [202]

A. I don't remember. It was a piece of fruit of some kind.

Q. As a matter of fact, he was eating an apple, wasn't he?

A. He might have been, I don't know.

Q. And as a matter of fact he dropped the apple, didn't he? A. I don't remember.

Q. Didn't you have some discussion with Officer Ramirez before you went there that he was going to eat an apple and drop the apple?

A. He said something about that. I don't recall.

Q. Something about eating an apple?

A. Eating some fruit.

Q. Well, what kind of fruit?

A. Some fruit, an apple or a banana or something like that.

Q. Do you have any recollection of that fruit that he was supposed to eat?

A. I believe it was either an apple or a banana. That is my best recollection.

Q. That is your best memory? Was he actually eating an apple or a banana at the time?

A. He was eating something from where I was. I

(Testimony of Meyer I. Goodman.)

could see him eating something through the windshield. [203]

Q. It was so far away you couldn't tell what he was eating; is that correct?

A. I couldn't see what he was eating, no; just that he was eating something.

Q. Because of the distance and it was late, 7:30, somewhere about that time, wasn't it? Don't laugh at this. This isn't funny at all.

A. Of course, it isn't. I told you he was eating fruit. I couldn't distinguish what he was eating exactly.

Q. Did you have any prearranged plan with him that he was to eat any certain kind of fruit?

A. I think there was something said about that.

Q. Well, where was it said?

A. In the office, before we went out.

Q. Before you went out there?

A. Yes, before we went out there, something was said about it.

Q. With whom did you have the conversation?

A. With Ramirez.

Q. Was the conversation about any particular fruit?

A. I believe he mentioned a banana. I believe he mentioned a banana. I'm not——

Q. Was he eating a banana or was he eating an apple or was he eating a pear?

A. I told you I couldn't distinguish what the fruit was, [204] but he was eating something.

Q. Why couldn't you distinguish? What pre-

(Testimony of Meyer I. Goodman.)

vented you from telling what that fruit was? Was there any particular obstruction from your view?

A. Well, just that he was sitting inside a car at the time, and——

Q. Did he eat the fruit when he got out of the car, or did he leave the fruit on the seat?

A. I don't know what he did with it. He was eating fruit. He was eating something in the car.

Q. That is your best memory, what you have told us now, with respect to this fruit business; is that right? A. That is right.

Q. There is nothing else in addition to that that you remember now concerning fruit, whether it was an apple or a banana, or where he was eating it, whether he was eating it in the car or eating it outside; is that right?

A. That is to the best of my memory right now.

Q. Now, it was dark at the time in the evening, wasn't it? A. No.

Q. It was light? A. It was light.

Q. You could discern Mr. Ramirez's features, could you? A. Yes. [205]

Q. From where you were? A. Yes.

Q. Yet you couldn't see what was in his hand or what he was eating?

A. I couldn't tell what he was eating.

Q. As you were across the street there, how many officers were with you?

A. Agents Cantu and Miller; two officers were with me.

Q. There were just three of you across the

(Testimony of Meyer I. Goodman.)

street? A. That is right.

Q. Were there any other officers there besides?

A. Yes, there were two other officers on the other side of the street near the market, on the opposite side of the street near the market.

Q. Were there other cars parked on this lot?

A. There were several, yes.

Q. How many cars were parked there?

A. I would probably say perhaps four or five, maybe half a dozen, scattered in the parking lot.

Q. People were walking back and forth over the lot? A. Some of them, yes.

Q. The market was open, wasn't it?

A. Yes.

Q. This was one of those large supermarkets, is it not? A. Yes. [206]

Q. You were inside the station across the street, weren't you? A. No, sir.

Q. Were you on the sidewalk?

A. I was in the parking area standing beside the government car.

Q. Well, the parking area there on that station as distinguished from the sidewalk, is it not?

A. That is correct.

Q. So you were further away because you were not on the sidewalk?

A. Not on the sidewalk; just directly behind.

Q. And Beverly Boulevard is a wide boulevard, is it not? A. Fairly wide.

Q. How many feet?

A. I wouldn't know. Perhaps 30 or 40 feet.

(Testimony of Meyer I. Goodman.)

Q. 30 feet for Beverly Boulevard?

A. Possibly.

Q. Or 40 feet? A. Yes.

Q. Well, you know it is an 80 foot boulevard, don't you? A. It might be.

Q. It might be 80 feet?

A. I don't think it is 80 feet. I doubt it is that wide. [207]

Q. Did you see Mr. Lozoya over there?

A. Yes, when he arrived.

Q. Yes? A. Yes, I did.

Q. You saw him when he drove into the lot?

A. I saw the car drive in and he stepped out of the car.

Q. You saw his car drive in. Did you see him in the car as it drove in? A. Yes.

Q. Who else was there at the time?

A. Who else was where, with me or——

Q. Not with you. In that area where he drove in, who else did you see there?

A. There might have been other people. I was not particularly paying any attention, sir, to any other persons.

Q. This man was at least a hundred feet from you, wasn't he? A. That is correct.

Q. How far away was he from you?

A. About a hundred feet. That is a very good estimate, I would say.

Q. And you were able to discern his features at that time of night from where you were standing? A. I saw——

(Testimony of Meyer I. Goodman.)

Q. Were you able to discern his features at that time? [208] A. Well, I saw this gentleman.

Q. Where you able to discern his features?

A. Do you mean to say the shape of his nose or the color of his eyes?

Q. Yes. Not the color of his eyes; discern his features. His eyes are not his features.

A. That is the gentleman I saw step from the car.

Q. You won't answer my question?

A. That is the only way I can answer the question.

Q. You saw a gentleman step from the opposite side from where you were standing, did you not?

A. No, he stepped from the driver's side of the car first, which was closest to me.

Q. Was there anybody else in his car at the time?

A. I didn't see anybody else.

Q. His car came in alone; he had no passengers?

A. I think there was somebody else with him at that time.

Q. Please don't guess.

A. Now that I recall, I think somebody was with him.

Q. A moment ago you said you thought he came in alone. You think somebody else was with him at the time?

A. I think somebody else was with him.

Q. Did you see anybody else get out of his car?

A. I believe somebody else did get out of his car. [209]

(Testimony of Meyer I. Goodman.)

Mr. Marcus: That is all.

The Court: Is that all for the witness?

Mr. Marcus: Well, a lot further examination, but it is 12:15 now.

The Court: Well, I thought maybe I would accommodate him and get through. I guess we better make it 2:00 o'clock. It is 12:15.

Mr. Bender: I think 2:00 o'clock is a good time. Of course, we will not finish today.

The Court: All right, 2:00 o'clock.

(Noon recess.) [210]

Wednesday, July 18, 1956—2:00 P.M.

Mr. Marcus: May I apologize to the court.

The Court: That's all right.

Mr. Marcus: I had to make an appearance in the Superior Court and the judge was late taking the bench.

The Court: I understand.

Mr. Marcus: Take the stand, please.

MEYER I. GOODMAN

called as a witness for the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Marcus:

Q. Mr. Goodman, as I understand, sir, your opinion is that the matter or substance that you examined on May 17th or 18th of this year, in your opinion, was marijuana? A. Yes, sir.

Q. And you based your opinion at that time upon the fact that you were graduated from a school—— A. No, I didn't.

Q. ——as a pharmacist?

A. No, I did not.

Q. Well, that is part of it, isn't it?

A. Well, that is a very minor part of it. [211]

Q. A very minor part of it?

A. Yes. I based it on 17 years as a Narcotic Agent and examination of probably a thousand samples of marijuana, sir.

Q. Have you ever at any time tested, by virtue of the microscopic examinations, any substance that you believed was marijuana?

A. I believe I did, once or twice.

Q. Once or twice?

A. Probably back around 1940 or '41.

Q. Except for those two examinations that you believe you may have subjected a substance known as

(Testimony of Meyer I. Goodman.)

marijuana, have you performed any other test upon any substance that you believed was marijuana?

A. Yes.

Q. What tests have you subjected them to?

A. To the test in which a diluted acid was administered to the material and the observation of carbon dioxide gas escaping, and I was also present on several occasions when the United States Chemist and the State Chemist at various localities conducted the Duquenois test.

Q. The what test?

A. The Duquenois test, the one you mentioned. I was present when that was done.

Q. You say you have observed chemists apply hydrochloric [212] acid to a substance believed to be marijuana; is that correct?

A. Some diluted acid. It wouldn't have to be hydrochloric. Any diluted acid.

Q. Any diluted acid directly to the marijuana?

A. Well, it was probably macerated first in a little water, put it under a glass——

Q. Well, was that done, not probably.

A. I believe it was, on those times when I observed it.

Q. Well, what happened? How were you able to ascertain by the the test that you have explained that the substance is marijuana?

A. Well, the major portion of the identification took place by the examination of the crude material itself. The very distinctive odor of it.

Q. We'll pass that now.

(Testimony of Meyer I. Goodman.)

A. These are all supplemental.

Q. I'm asking how you determine by the chemical analysis test known as the Duquenois test whether the material is actually marijuana?

A. I never used the Duquenois test personally. That is the province of the U. S. Chemist to establish that the material was marijuana.

Q. But you stated that by applying hydrochloric acid or any acid directly to the substance, you can tell that the [213] substance is marijuana or is not marijuana?

A. That is one of the substantiating factors in the identification of it. That alone does not prove, one way or the other, but that added to all the other things is very substantial.

Q. Well, sir, am I to understand your testimony is now that even with the application of the Duquenois test you cannot tell whether a substance is marijuana? A. No, I didn't say that.

Q. All right.

A. The Duquenois test is very conclusive. It is a specific chemical test used by the State Chemist, by the U. S. Chemist in all types of cases such as this, in positiviely identifying the material beyond any dispute.

Q. How do you tell whether the substance is marijuana when the Duquenois test is made?

A. Well, it is a color test. As I recall, the test being performed in my presence on a number of occasions, it's a test in which the Duquenois reagent, which is a combination of materials, a liquid sub-

(Testimony of Meyer I. Goodman.)

stance, the Duquenois reagent is added to the marijuana. Let's say we take a little marijuana——

Q. Please tell me how you tell after the test?

A. By the color test.

Q. What color does it take?

A. It takes a pale blue color. There is a little blue [214] line that is formed at the junction of the Duquenois reagent and I believe it is concentrated hydrochloric acid that are used.

Q. You believe that?

A. Yes, I'm just telling you from recollection now, from my memory. You see, they take the crude material——

Q. A blue color?

A. A pale blue color, yes, which is very specific. You see, if I may explain to you, sir, the crude material as we obtain it, such as this, first has to be treated with the Duquenois reagent. It is macerated —in other words, it is placed in a mortar and with his pestle it is ground up slightly with the Duquenois reagent and the Duquenois reagent acts with cannabinol, which is an alcohol type of material in the plant and extracts the cannabinol. Then they filter this material off and they obtain a clear liquid containing the cannabis or marijuana. It is then treated with concentrated hydrochloric acid solution, which, if the material is marijuana, forms a distinct blue line at the meeting of these two liquid materials. That is to my best recollection. I may be slightly mistaken in possibly one of the materials, but that is the general conception that I have.

(Testimony of Meyer I. Goodman.)

Q. Isn't it a fact that there is no blue line formed at all and that isn't the color at all?

A. That is not a fact. I have seen the blue line form. [215]

Q. Isn't it a fact that it is a bright purple color?

A. No, it is not a bright purple color. As I recall, it is a distinct blue color.

Q. How many of those blue lines have you seen?

A. Oh, I've seen maybe a dozen or half a dozen—I don't recall—over the years.

Q. Have you any books you could refer to at the present time?

A. Not with me right here, but I could take you to any library and show it to you.

Q. I don't want you to show it to me, but I want you to convince yourself of it, if there is, as you say, a blue line that indicates to you that it is marijuana. A. Yes.

Q. If it should turn out to be a purple line, what would that indicate to you?

A. That would indicate to me that there is considerable room for doubt.

Q. Do you have any books available to you now?

A. No, I don't. I believe the U. S. Chemist could provide them to you, sir.

Q. Do you know of any other chemical test?

A. Offhand I don't recall, to tell the truth. My work has been in the——

Q. Isn't the bean test another common way [216] of ascertaining the substance is marijuana?

A. The word is familiar to me. I haven't been

(Testimony of Meyer I. Goodman.)

associated with it for many years. I have heard the term used. There are a number of tests that can be used.

Q. Isn't it a fact that in the Duquenois test they do not use hydrochloric acid at all?

A. I believe concentrated hydrochloric acid, I said, is used.

Q. Hydrochloride, not hydrochloric, that is used?

A. I don't——

Mr. Bender: Just a moment. The Government objects to counsel's continuing to interrupt before the witness has finished his answer.

Mr. Marcus: I am sorry.

Mr. Bender: May he be permitted to finish his answer, your Honor?

The Court: Yes.

Q. (By Mr. Marcus): Is it hydrochloride acid that is used?

A. There is no such thing as hydrochloride acid.

Q. There is no such thing?

A. No. That is an incorrect term for you to use.

Q. I see. Now, did you ever hear of applying the bean test by using ethyl acetate as a solvent to the substance? Did you ever hear of that? [217]

A. I have heard of it. Well, that is very similar in many ways to the Duquenois test.

Q. This is called the "bean test." Have you ever heard of the bean test?

A. I think it is the "beam test."

Q. That's right.

A. You said "bean," as I heard it.

(Testimony of Meyer I. Goodman.)

Q. All right.

A. I have heard the term used.

Q. Have you ever seen the test used?

A. A long time ago I might have. I don't know.

Q. Isn't it a fact that in the beam test the substance is burned?

A. I don't recall that it is.

Q. You don't know that?

A. I don't think it is.

Q. All right. We will proceed further now from these tests. You don't claim to be a forensic chemist, do you?

A. No, I do not. My work is as a Narcotics Agent for 17 years.

Q. Isn't it, sir, the most unreliable test to determine whether a substance is marijuana or not by visual examination?

A. That is one of the best, in my opinion, one of the best tests is by the sensory organs: by the odor, by the appearance, by the texture, and so forth. [218]

Q. By the appearance? The appearance, you mean the fuzzy substance?

A. The fuzzy material, the very characteristic seeds that are found always attached to the material, the very distinctive odor one obtains by rubbing it in the palm of the hands. Any officer can tell you that.

Q. In every one of these cases they are sent to the U. S. Chemist at San Francisco, aren't they?

A. Invariably, all of them.

(Testimony of Meyer I. Goodman.)

Q. And that is so that there shall be no doubt concerning the substance; isn't that correct?

A. Yes, very true.

Q. And the chemist, sir, performs the Duquenois test or the beam test, doesn't he?

A. I believe he does.

Q. And you insist that the mere visual examination is the best test?

A. The first thing a chemist does——

Q. Is that right? You insist the visual examination is the best test?

A. For a person in the field like myself, yes.

Q. I am talking about not whether you are in the field or not. I'm talking as to whether or not the test to be applied is more reliable by a mere visual examination than by a chemical analysis of the substance, in your opinion? [219]

A. The final judge is the chemical test.

Q. That is the best test, isn't it?

A. Yes, sure.

Q. And that is the most reliable?

A. Positively, I agree.

Q. And isn't it a fact that even when a microscopic examination of the substance is made you may err with respect to its nature or its kind?

A. That is quite possible.

Q. And the microscopic examination is more reliable than the mere visual examination, is it not?

A. In my opinion, they have about the same weight.

Q. In other words, if you look at a substance

(Testimony of Meyer I. Goodman.)

through the naked eye without the benefit of microscopic examination and you look at it through the microscope, in your opinion the visual examination by the microscope and through the eye has about the same weight; is that right?

A. About the same weight. They are both very important.

Q. That is your opinion?

A. That is my opinion.

Q. As a chemist? A. Yes, sir.

Q. Is this your first experience on the witness stand to testify, in your opinion, with respect to whether a substance is marijuana or not? [220]

A. I have testified as an expert witness on at least half a dozen occasions.

Q. I'm asking you, sir, if this is your first experience today on the witness stand wherein you are testifying with respect to your opinion on the subject of marijuana?

A. I told you I have testified at least on six occasions in six different courts, in probably six different parts of the United States.

Q. Did you ever testify in the District Court of California before? A. Yes, on other cases.

Q. With respect to your opinion as a chemist?

A. No, we always have the chemist here—always.

Q. Why don't you answer that directly that you have never testified before in the District Court of California with respect to——

A. I said no.

(Testimony of Meyer I. Goodman.)

Mr. Bender: Just a moment. The Government objects.

Mr. Marcus: I hadn't finished the question.

Q. My question is, sir, have you ever testified as an expert? A. No, I have not.

Q. In the District Court of the United States at Los Angeles? A. I have not. [221]

Q. Where have you testified as an expert?

A. In Massachusetts and in New York.

Q. In the United States District Court?

A. I think they were all in the state courts.

Q. Did you ever testify in any United States District Court as an expert chemist?

A. I believe I did once in New York, in the Southern District of New York.

Q. How long ago?

A. I believe it was in '42 or '43.

Q. You believe you did on one occasion; is that right, sir?

A. As I recall, in the District Court.

Q. Yes, that's what I'm talking about.

A. My best recollection. I don't remember.

Q. Are you even sure of having testified on one occasion? A. Yes, I'm sure of that.

Q. And in what District was that?

A. Southern District of New York, New York City.

Q. Do you recall the name of the case?

A. I don't recall, no.

Q. Were there chemists testifying in court at that time?

(Testimony of Meyer I. Goodman.)

A. No, that was another situation in which the material [222] had been stipulated and then through some misunderstanding——

Q. The material had been stipulated to being marijuana?

A. Yes, and then through some misunderstanding the question was raised by the defense, as I recall it, and a situation arose in which the United States Attorney placed me on the stand due to my long experience of observing this material.

Q. Similar to what has happened in this case?

A. Very, very similar.

Q. And I assume that you were not cross-examined as you were today? A. Yes, I was.

Q. You were? A. Yes.

Q. And since that time you didn't testify in any court after you came here?

A. We always have the chemist here, all of the time.

Q. On all other cases where you testified there has been a chemist who testified; is that right?

A. My position is as a Narcotic Agent, not as a chemist.

Q. I understand, but you have been called upon today as an expert.

A. Apparently for the reason that the chemist is not here.

Q. You don't consider yourself an expert forensic [223] chemist, do you?

(Testimony of Meyer I. Goodman.)

A. I consider myself an expert in the observation of narcotic drugs.

Q. Do you consider yourself an expert forensic chemist? A. No, not right now.

Q. That answers it. Now, sir, directing your attention to this day, May 17, 1956, have you related in direct examination everything that you now recollect as having occurred on Beverly Boulevard with reference to the defendant Lozoya?

A. I believe I have. I might have missed some minor point.

Q. Just in summation, did you so testify this morning that you were standing across the street, that you observed a car drive on the lot, that you saw the defendant Lozoya in the car, that you do not recollect at this time whether there was anyone else in the car with him or not, that the car came to a stop——

A. No, I recollect that there was somebody with him.

Q. Now, you are definite that there was someone with him?

A. I recollect somebody was in the car with him.

Q. Now, you say the car finally came to a stop parallel to the car which Mr. Ramirez had been sitting in? A. No, the first time—— [224]

Q. It finally came to a stop?

A. Eventually, yes.

Q. That is what I said

A. And backed in beside the car.

Q. That you saw Mr. Lozoya get out and have

(Testimony of Meyer I. Goodman.)

a conversation with Mr. Ramirez, and then proceed to open the trunk of his car, take a sack or something out of the car there and put it into the government car; did you say that?

A. Yes; I believe I did.

Q. And then you gentlemen ran across the street? A. That is right.

Q. Did you see Mr. Ramirez at any time have his hands on that substance or that sack?

A. At any time?

Q. There at that time while you gentlemen were across the street?

A. He might have touched it. I don't recall. He might have touched it in the process of transferring. I don't recall. I don't think he did touch it.

Q. Where was Mr. Ramirez at the time that Mr. Lozoya, as you claim, opened the trunk of his car and took the substance or whatever he had there and put it in the car which Mr. Ramirez had been in? Where was Mr. Ramirez at that time?

A. He was standing——

Q. He just stood there? [225]

A. Besides Lozoya.

Q. Did he move at any time?

A. Oh, yes; he moved.

Q. What did he do, if you observed him?

A. Just moved. He stood there and stood beside this gentleman.

Q. Tell us exactly what you remember at this time that you saw him do? A. Ramirez?

Q. Mr. Ramirez.

(Testimony of Meyer I. Goodman.)

A. He just stood there and watched Lozoya transfer the bag of marijuana from the back of Lozoya's car to the back of Ramirez's car.

Q. You didn't see Mr. Ramirez do anything, did you?

A. That is all he did, as far as I can recall.

Q. Just stood there?

A. Just stood there.

Q. You saw Mr. Ramirez's car before Mr. Lozoya walked up to it, didn't you? A. Yes.

Q. Had you seen it before?

A. Before Lozoya arrived?

Q. Before Lozoya arrived? A. Yes.

Q. Did you see it when the car arrived? [226]

A. When Lozoya arrived.

Q. No; when Mr. Ramirez arrived?

A. No; he was already there when I arrived. He was parked and sitting in the car.

Q. He was already parked and sitting in the car?

A. That is right.

Q. You didn't see Mr. Ramirez go up to the back of his car, did you?

A. At what time are you referring to?

Q. At any time while you observed him there, did he ever at any time, while you were there across the street observing Mr. Ramirez, see him go to the back of his car?

A. Well, when Lozoya arrived and took the sack out, Ramirez had to open the trunk of his car.

Q. Now you have the point.

(Testimony of Meyer I. Goodman.)

A. Maybe if you had mentioned it I would have understood what you are talking about.

Q. I asked you if you told us everything and you said you had. I asked you if you saw him do anything except watch Mr. Lozoya. Now you realize, don't you, that he would have to open the trunk of his car in order to put something in?

A. I believe on direct examination I told you that, sir.

Q. I'm asking you on cross-examination. I'm not conducting any direct examination. You understand that, don't [227] you, that he would have to open the trunk of his car? A. He certainly did.

Q. In order for something to get in there?

A. That is very true.

Q. Did you actually see him open the trunk of the car?

A. Yes; I saw the trunk fly open.

Q. And who opened it? A. Ramirez.

Q. Now you remember that?

A. Yes; I remember that.

Q. That comes to you since you have been prompted?

A. No; I misunderstood what you were driving at, sir.

Q. Did you see what he opened the back of the car with?

A. With a key, I assume. I couldn't see the key.

Q. But you saw him monkey with the lock?

A. He went to the back of the car at the time and the trunk opened.

(Testimony of Meyer I. Goodman.)

Q. You saw him open the trunk, and you saw Mr. Lozoya put the stuff in?

A. That is correct.

Q. And it was never removed, was it, from the sack while you observed it during the time it came from Lozoya's car until the time it came to the Ramirez car? A. What was removed?

Q. Any of the substance? [228] A. No.

Q. Was it opened? A. No, sir.

Q. Or examined? A. No.

Q. You're sure of that? A. I am positive.

Q. Now Mr. Ramirez has testified that he, at the time that Mr. Lozoya took it out of his car, he took a package of it out and he opened it and he looked at it and examined it.

Mr. Bender: You have misstated his testimony in that regard.

Mr. Marcus: I have not. He said he opened the package and he looked at it and he asked him if it was good stuff or not.

Mr. Bender: He testified——

Mr. Marcus: Please, I'm suggesting to the court, make an objection.

Mr. Bender: All right. The objection is that you are asking a question based on evidence not in the record. Your statement concerning the purported statement of Mr. Ramirez is in error. It is incorrect.

Mr. Marcus: I will stand on the record and ask this witness whether or not you at any time saw Mr. Ramirez, from the time it was placed in his car, take

(Testimony of Meyer I. Goodman.)

the substance out and [229] open the package right then and there?

A. From the time Lozoya took the bag from the back of his car?

Q. Yes.

A. To the time it got into the rear of Ramirez' car?

Q. Yes.

A. I didn't observe him take the package out. It is possible he might have, but I didn't observe it.

Q. If you observed everything that happened, how could it be possible that he opened the package and looked at it?

A. Well, I didn't see him take a package out of there, no.

Q. Did you, after you arrived, open any packages? A. No; not on that scene there.

Q. Was the package opened at all while you were there? A. While I was there?

Q. Yes.

A. One of the other officers might have, but I didn't notice it.

Q. Not what they might have done. Did you at any time observe anyone open any of the packages there at the scene?

A. Well, you see, I was talking to Lozoya——

Q. Yes or no. I don't care whether you were talking to Lozoya. Did you observe anybody open any package? [230]

A. I didn't see it, no. It might have been done, but I didn't see it.

(Testimony of Meyer I. Goodman.)

Q. How long did this whole incident take?

A. Oh, about five or ten minutes.

Q. Do you think it took as long as ten minutes?

A. I don't know. A very short period of time.

Q. You walked over together with the officers with drawn guns, did you not? A. No, sir.

Q. Did anybody have their guns out?

A. I don't think so. I didn't have mine out. I was not interested in what the other officers were doing.

Q. You saw them there?

A. The other officers were accompanying me. Some were behind me. Some were in front of me.

Q. You didn't see whether or not they had their guns drawn?

A. I didn't notice. They might have.

Q. Before you walked across the street you didn't know what was in those packages or you didn't know at any time while you were there, did you?

Mr. Bender: That is objected to as being compound.

Q. (By Mr. Marcus): Did you at any time——

The Court: He is withdrawing it.

Q. (By Mr. Marcus): Did you at any time know, of your [231] own knowledge, what was in the sacks during the period of time that you were there?

A. No, not until I examined it later.

Q. I'm only talking about the time you were there. A. No.

Q. Listen to my question.

(Testimony of Meyer I. Goodman.)

A. Of course not. I say no.

Q. You didn't know what it was?

A. Positively no.

Q. You didn't even look at it, so you wouldn't know, by any chance, would you?

A. That is correct.

Q. Did you tell Mr. Lozoya he was under arrest?

A. I believe Agent Gullen told them, in my presence.

Q. Did you also tell Mr. Villas or anyone else tell Mr. Villas, in your presence, that he was under arrest? A. Who is Mr. Villas?

Q. Did you see anybody else there that evening?

A. There was another fellow called Johnny, by Agent Ramirez. I didn't know him particularly.

Q. Let's say Johnny then. Did anyone tell Johnny that he was under arrest?

A. One of the officers might have. I don't recall.

Q. Did you actually hear them say it?

A. No, I didn't [232]

Q. Is it a fact, sir, that when you walked up there you said to Mr. Ramirez, "Where is the stuff"? A. That is not so.

Q. Not so.

A. No. I saw him put it into the trunk of the car.

Q. I understand that is what you testified to. Did you examine Mr. Ramirez' car—I mean Mr. Lozoya's car? A. I did.

Q. You did? A. Yes.

Q. What examination did you make of his car?

A. I asked him for his keys.

(Testimony of Meyer I. Goodman.)

Q. Yes, sir.

A. And I think the keys were still in the ignition, as I recall.

Q. The keys were in the ignition at that time, weren't they?

A. I think they were. I'm not too sure. I either asked him for them or they were in the ignition and I then looked in the glove compartment, in the trunk of the car, and I think we removed the back seat and looked under there.

Q. Mr. Ramirez was there at the time, wasn't he? A. He was at the scene, yes.

Q. Yes. You never saw Mr. Lozoya get back into his car, did you, from the time, as you claim, that something was [233] transferred from his car to the Ramirez car?

A. He never got back into his car.

Q. That's right.

A. Once he was arrested?

Q. Yes.

A. No, he never got back into his car.

Q. You found the keys in the lock, didn't you?

A. I didn't say that. He either gave them to me——

Q. Didn't you find the keys or take the keys from the ignition?

A. I don't recall. I don't recall taking them from the ignition. I know——

Q. Wait a minute. Just answer yes or no, if you took the keys from the ignition.

A. If I might explain to you——

(Testimony of Meyer I. Goodman.)

That doesn't require any explanation.

The Court: He wants you to answer yes or no. Did you take the keys from the ignition or didn't you?

The Witness: Your Honor, I don't recall whether I asked for them from Lozoya or whether they were in the car. I believe I asked him for the keys to the ignition, and he gave them to me. That is my best recollection.

Q. (By Mr. Marcus): Didn't you testify not more than five minutes ago that you took the keys from the ignition and opened up the glove compartment? [234]

A. I didn't say that.

Q. You did not say that?

A. No, sir; I did not.

Q. You knew, didn't you, that he had never gone back to the car, that he couldn't have put the keys back into the ignition—you know that?

A. No, I don't follow you.

Q. If he had opened the trunk of the car and never got back into the car, he would have to have had those keys in his hands to open the trunk, wouldn't he?

A. I'm not too sure he needed the keys to open the trunk of his car. As I recall it, it is quite possible, I think that the trunk opened without the key—his trunk opened without the key.

Q. Let's not guess about it.

A. I'm not guessing. I'm telling you my best recollection, sir.

(Testimony of Meyer I. Goodman.)

Q. Isn't it a fact that you had to use the keys to open the trunk?

A. I don't think so. I'm not sure whether I did or not. I know that we opened it.

Q. You say you had the keys, you say you asked him for the keys or you got it out of the ignition, you don't know which.

A. The reason we took the key——

Q. Not the reason.

A. ——To try to start the car. [235]

Q. I want the facts, not the reasons. You opened the back of the trunk, didn't you?

A. The trunk was opened, yes.

Q. It was opened? A. Yes.

Q. Did you use the key to open it?

A. I don't recall whether we needed it or not.

Q. Did you have the keys in your hand?

A. I had the keys with me.

Q. Isn't it a fact, sir, that you went to open the back of the car to search the car in the presence of Ramirez and you couldn't open the door and you said to Mr. Lozoya, "Give me the keys," so he told you that if you wanted the keys to take them out of the car, you went to the front of the car, got in the seat and took the keys out; do you remember that?

A. That is untrue.

Q. That is untrue? A. Yes.

Q. Did you ask him for the keys?

A. I believe I asked him for the keys, and he gave them to me.

Q. That is your best memory?

(Testimony of Meyer I. Goodman.)

A. That is my best recollection, yes.

Mr. Marcus: Before we pass too far, Mr. Reporter, and with the court's permission, I would like to have you place [236] a marker, because I want to turn back, where he suggested about getting the keys out of the ignition.

The Court: All right.

Q. (By Mr. Marcus): Where was the ignition on this car? A. Right on the dashboard.

Q. You saw the ignition at that time?

A. Yes.

Q. How many of the officers helped you search the car?

A. I think there were one or two others.

Q. Mr. Ramirez helped you in the search?

A. No, sir.

Q. You opened the back of the car, didn't you? Whatever way you got into it, you opened it?

A. Yes, we took out the back seat, as I recall, and looked under it.

Q. Did you open the trunk, too?

A. The trunk was opened, yes.

Q. And you searched back there? A. Yes.

Q. You took out the seats of the car and searched there, too, didn't you?

A. Just the back seat, I believe.

Q. Did you search the front seat? Did you search the front seat area?

A. I think one of the officers searched in the front. [237]

Q. You testified that you opened the glove com-

(Testimony of Meyer I. Goodman.)

partment, didn't you? A. I did, yes.

Q. So that must have been in the front seat?

A. At sometime or other, yes.

Q. Did you search the floor boards?

A. Looked around the floor.

Q. Did you lift up the rug? A. No.

Q. At least, you made a search, as you are accustomed and have been instructed to make when you are searching for narcotics, didn't you?

A. We searched the car.

Q. Was that done in the presence of Ramirez?

A. He was on the scene.

Q. Well, he was right there, wasn't he?

A. Well he was not in the car with us.

Q. I didn't say he was in the car with you.

A. He was on the scene. He was standing somewhere. I was not looking at Ramirez.

Q. Didn't you then say, "Well, we don't find anything in this car"?

A. No. Do you know what I said? I said to one of the other officers, as I recall, "There is no more stuff in the car." That's all I actually said. [238]

Q. Well, you couldn't find anything in there, could you?

A. I said there was no more stuff in the car.

Q. Did you find anything in the car?

A. Nothing else in the car.

Q. Did you find any leaves or seeds or twigs or anything? A. Didn't see any.

Q. You won't answer the question directly, will you? A. No——

(Testimony of Meyer I. Goodman.)

Mr. Bender: The Government objects to the question on the ground that it is argumentative, your Honor.

The Court: Yes, I will sustain the objection.

Q. (By Mr. Marcus): Did you find anything resembling marijuana in the car?

A. I didn't see any.

Q. Can you answer that yes or no?

A. If you phrase it, did I or did I not find anything—will you rephrase it again?

Mr. Bender: The Government objects to the question on the ground that it is ambiguous.

The Court: He wants to know if you found any marijuana in the car.

Mr. Bender: Which car?

The Witness: I did not, sir. [239]

The Court: He said he didn't find any.

Mr. Bender: Counsel, which car are you referring to?

Mr. Marcus: If you had been listening you would know it was the car he was searching. He certainly didn't search the Government car.

Mr. Bender: I just wanted to make certain it is clear.

Q. (By Mr. Marcus): Did Mr. Lozoya ever tell you or admit to you in any conversation that he had any knowledge concerning any substance that you found in the Government car? A. No, sir.

Q. Did you go down to the station, too? Did you come here to the Federal Building?

A. Yes, sir: I did.

(Testimony of Meyer I. Goodman.)

Q. And was Mr. Lozoya brought in here?

A. Yes.

Q. Do you remember any other conversation that was held out there besides what you have related?

A. I don't remember any other, because I was not there.

Q. Did you say to Mr. Ramirez, "How does that stuff happen to be in this car"? Did you say that to him? A. To Ramirez?

Q. Mr. Ramirez, yes, sir.

A. No, sir; I don't recall.

Q. Didn't he say, "This car is registered to my girl friend"? [240]

A. I don't recall that at all.

Q. Well, didn't you ask him how the stuff got into that car? A. Did I ask who?

Q. Mr. Ramirez.

A. Are you talking about the sack?

Q. I am talking about the sack, yes, sir.

A. I saw how it got into the car.

Q. I didn't ask you what you saw. I asked you if you asked Mr. Ramirez how it got into his car?

A. I don't recall asking him.

Q. And didn't Mr. Ramirez say that the car didn't belong to him?

A. Lozoya's car didn't belong to him.

Q. No, I am talking about the Government car.

A. No.

Q. Didn't you ask Mr. Ramirez who owned the car? A. I don't recall asking him that.

(Testimony of Meyer I. Goodman.)

Q. Wasn't there a conversation between you and Mr. Ramirez with respect to that '52 or '53 Mercury that Mr. Ramirez was in? Wasn't there a conversation with respect to that car?

A. I don't understand you, sir.

Q. Beg your pardon?

A. I don't understand you.

Q. I don't know how I can explain it any more. Didn't you [241] talk to Mr. Ramirez and ask him whose car the '52 or '53 Mercury was? I am refering now to the Government car.

A. The Government car?

Q. Yes, sir.

A. If you let me think back a moment, maybe I can——

Q. Let me refresh your memory a little bit, without your thinking. Didn't you ask Mr. Ramirez who the car belonged to?

A. I might have. I don't remember the particulars, sir.

Q. Didn't Mr. Ramirez say that the car belonged to his girl friend?

A. He might have said that.

Q. Well, does my suggestion to you about the conversation refresh your memory at all?

A. It doesn't particularly, sir.

Q. Didn't Mr. Ramirez tell you at that time, "You will have to ask my girl friend. I don't recall anything about the stuff that was in the car"?

A. He might have said that generally to all the officers present.

(Testimony of Meyer I. Goodman.)

Q. I don't care if he said it to all the officers present, or if he said it to you in particular.

A. I don't recall. I say, I don't recall.

Q. At least, at that time Mr. Ramirez was not known [242] as a Government agent to Lozoya, was he? A. That is correct.

Q. And Villas was not known as a special employee of the Government to this man you called Johnny? A. That is correct.

Q. Is that correct, too? You had seen Mr. Ramirez before and discussed the case with him, had you not? A. That is correct.

Q. You had been at the conference involving Mr. Ramirez and Mr. Johnny Villas, hadn't you?

A. I spoke to Ramirez, that's all.

Q. You saw Villas there, too, didn't you, or Johnny, as you call him? A. I saw him.

Q. You saw him before that evening, did you not? A. I never spoke to him before.

Q. I didn't ask you whether you ever spoke to him before. I asked you if you saw him?

A. I don't believe I had ever seen him before.

Q. Didn't you see him in the Federal Building here?

A. I might have. I don't recall. I might have seen him.

Q. At least, it was your purpose at the time, was it not, to keep the identity of Mr. Ramirez unknown? A. That is correct. [243]

Q. So there was a conversation there, wasn't there, about Ramirez and about the substance that

(Testimony of Meyer I. Goodman.)

was in his car, so that Mr. Lozoya would be off guard, would not suspect it?

A. That might be so, sir.

Q. You talked to Ramirez there that evening, didn't you? A. We had a brief conversation.

Q. What was said?

A. I don't recall exactly. I spoke—Ramirez was standing here, and Villas—I mean Lozoya was standing beside him, and at that time he had already been placed under arrest, and I asked——

Q. I understand that, sir. I am only interested in the conversation you recollect having with Mr. Ramirez that evening after you had come across the street. Do you remember anything that was said?

A. I don't recall specifically, but I might have said to him, "How did that stuff——"

Q. I don't want you to guess. If you don't remember, say you don't remember.

A. I don't remember. I just don't remember the words I said to him.

Q. But you do remember talking to him?

A. Yes.

Q. Does my suggestion to you with respect to what was [244] said that evening refresh your memory at all? A. Not particularly, sir.

The Court: Shall we stop at this time? Judge Carter is in my chambers. Is this a convenient time, Mr. Marcus?

Mr. Marcus: Yes.

(Testimony of Meyer I. Goodman.)

(Recess.)

Q. (By Mr. Marcus): Mr. Goodman, at this time I am anxious to ascertain what you actually saw while you were across the street. I understood you to say, sir, that you saw something taken out of one car and put into the other car; is that right?

A. Yes, sir.

Q. That is nothing that someone told you, was it? A. That's right.

Q. It was something you actually saw with your own eyes? A. Yes, sir.

Q. Did you see the Lozoya car approach the market?

A. No, I did not. I saw the ones in arriving there.

Q. Well, you were on the parking lot of the gasoline station; is that right?

A. That is correct.

Q. What corner of the gasoline station, on——

A. Well, I believe it is—it is directly across the street from the market. I couldn't tell you whether it is—I would say it is on the northeast corner. That is my [245] description of it.

Q. Does it face Beverly Boulevard?

A. Well, it is right on the corner. Part of it is on Beverly Boulevard, part of it is on Poplar.

Q. Poplar? A. Yes.

Q. Where is the market located?

A. Directly across the street from the——

Q. What corner?

(Testimony of Meyer I. Goodman.)

A. Well, I would say that it was on the southeast corner.

Q. Southeast corner of Beverly Boulevard and Poplar?

A. On the same side of Poplar as the gas station.

Q. Where is the entrance to the market? Is it on Beverly Boulevard?

A. There is an entrance on Poplar.

Q. There is an entrance on Poplar? Is there an entrance on Beverly?

A. There is an entrance on Beverly, too.

Q. The main entrance is on Beverly, isn't it?

A. I don't know if you would call it the main entrance. There are two entrances.

Q. Were you ever at that market?

A. I was never inside the market.

Q. Did you see the front door? [246]

A. Yes.

Q. Where was it that you saw it?

A. The front door of the market?

Q. Yes, that's right.

A. The front door of the market was on Beverly.

Q. Where did you see the car parked?

A. In the parking lot just behind the market.

Q. This park is on the rear of the market, wasn't it?

A. That is right, the parking lot goes all the way around the back and the side.

Q. Yes, but this parking lot that you say you saw Mr. Lozoya's car parked in was in the rear of the market? A. That is correct.

(Testimony of Meyer I. Goodman.)

Q. And you are telling this court that you saw what was going on in the rear of the market?

A. The market is to one side.

Q. I understand where it is. It is right on the corner, isn't it?

A. Yes, but the parking lot——

Q. And you were on the northeast corner. Now, I am going to show you something (going to the blackboard). Look at this, will you? Is this the service station you are talking about? A. Yes.

Q. Is this the market you are talking [247] about? A. That is the one.

Q. Is this where the cars were parked?

A. No.

Q. Where were they parked?

A. May I show you?

Q. Just mark it on this. You said it was to the rear of the market, didn't you? A. Yes.

Q. There is a piece of chalk.

Mr. Bender: Which direction is north on the map?

Mr. Marcus: It is marked here north, south, east and west.

The Witness: Well, there is an entrance here.

Q. (By Mr. Marcus): Let's not change any of this map, though. You show me where the cars were parked.

A. The parking lot extends all the way around on both sides here.

Q. This is the market? A. Yes.

Q. Where was the car parked?

A. Both cars were parked here.

(Testimony of Meyer I. Goodman.)

Q. Both cars were parked here up against the back of the building?

A. Against the back of the parking lot.

Q. Were they parked against the building? [248] A. No.

Q. They didn't drive up against the building?

A. Against the market building?

Q. Yes.

A. No, sir; they were parked over here.

Q. Away from it? A. Yes.

Q. And you were over here?

A. No; over here.

Q. Here is the parking lot?

A. Yes, but here is the gas station, with parking area around it. We were over here.

Q. No, here is the gas station here.

A. Well, if this is——

Q. Let's not make it any bigger, please. What was the frontage of the parking lot of the service station?

A. I don't know. It was pretty——

Q. Give me an idea. A. It is a big——

Q. The service station itself, how large is it?

A. Oh, the actual building you mean? The building itself?

Q. Yes.

A. Or the building and the parking lot?

Q. The building itself, how large is it? [249]

A. The building itself is probably, I would guess, maybe 30 feet.

Q. You guess 30 feet? A. 40 feet could be.

(Testimony of Meyer I. Goodman.)

Q. 30 or 40 feet? A. Yes.

Q. This is a super market across the street, isn't it? A. That is right.

Q. How wide is that?

A. That is about maybe 50, 60 feet.

Q. It is a hundred feet, isn't it, the front of that market on Beverly?

A. I don't think it is a hundred. It might be 60 or 70. I am just guessing now.

Q. What is your best guess?

A. 60 or 70 feet.

Q. All right, 70 feet. What is the parking lot that adjoins the service station? How large is it?

A. It is very large—tremendous.

Q. How large is it?

A. Maybe—oh, maybe 120, 130 feet, something like that.

Q. Are you guessing again?

A. Well, I am just guessing—giving you my best judgment. [250]

Q. At least, you were some place in this area of the parking lot, weren't you?

A. I was 'way over on the side, near the back fence.

Q. This service station would be 30 or 40 feet, as compared to the market, which you say is 70 feet—that's half? A. Yes.

Q. And you were somewhere in this area, weren't you?

A. This is not a true picture of the parking area.

(Testimony of Meyer I. Goodman.)

Q. At least, from what you told us, you couldn't predict a true picture either, could you?

A. Yes, I could.

Q. Somewhere between 30 and 40 feet, and this might be 50 or 60 feet or something?

A. The parking area at the gas station extends maybe a hundred and thirty to a hundred and forty feet.

Q. We are talking about the market.

A. Yes, and the parking area of the market extends away over on this side.

Q. How far back did the parking area extend?

A. Oh, maybe 40 or 50 feet.

Q. How deep was the market?

A. I don't know. I couldn't tell you.

Q. The boulevard itself is approximately 100 feet, isn't it? A. The boulevard? [251]

Q. Yes.

A. I don't know how wide it is.

Q. At least, you were somewhere in here. You would have to look across there, and if you were in the station or immediately adjoining the station the market obstructed your view to the car, didn't it?

A. It certainly did not.

Q. Didn't obstruct it? A. Not one bit.

Q. And you could tell that the man was eating fruit over there, away back here where you claim it was parked? A. He was eating something.

Q. Was it to the rear of the parking lot where the car was parked?

(Testimony of Meyer I. Goodman.)

A. It was against the back portion of the parking lot.

Q. Not against the back portion of the building?

A. Of the market building?

Q. Yes.

A. No, it was way away from the market.

Q. Didn't you testify this morning that he parked parallel to Mr. Ramirez' car?

A. He backed in beside his car.

Q. Didn't you testify his car was ultimately parked parallel? A. Ultimately it was. [252]

Q. And didn't you testify that he was to the rear of the market building? Didn't you testify to that?

A. It was in the back lot of the market, in the back parking lot of the market.

Q. Didn't you testify it was to the rear of the building? A. I might have said to the rear.

Q. When the drawing is made and if you were over on this side, you knew you couldn't see through this building, didn't you?

A. I didn't have to see through the building.

Q. I know you didn't have to and you didn't look through the building, did you?

A. The cars were very, very apparent, both of them, in plain view.

Q. Did you talk this case over with Mr. Ramirez before you testified? A. When was that?

Q. At any time?

A. I think yesterday, he called me to come down to the office and that the case was going to be tried

(Testimony of Meyer I. Goodman.)

and asked me to come in. I was on leave at the time.

Q. I asked you if you talked over this case with Mr. Ramirez before you testified. Just answer yes or no.

A. Yes, parts of it, very scanty. [253]

Q. Did you talk to him about what you were going to testify to from the witness stand?

A. No.

Q. Did you talk to him about what the facts were as between you and Mr. Ramirez?

A. I didn't discuss that with him.

Q. Well, you said you discussed it scantily. You mean you discussed——

A. He told me that the Lozoya case was going to be tried and would I come down town.

Q. Did you talk the facts over with him with reference to the Lozoya case?

A. I didn't discuss it with him.

Q. Nothing?

A. Nothing that he didn't have. I would have, but I don't think the occasion arose for me to discuss it.

Q. Did you discuss with Mr. Ramirez as to the position of the two cars with reference to the market? A. No; I didn't.

Q. Did you make any pictures there at the time?

A. At the time of the incident?

Q. Yes, or shortly after that as to where the cars were parked?

A. No; I made no pictures.

Q. Did you make any notes at the time? [254]

(Testimony of Meyer I. Goodman.)

A. I didn't make any notes, no.

Q. Everything that you testified to is with reference to your memory as to what transpired?

A. It is very distinct in my memory.

Q. I don't care whether it is—— A. Yes.

Q. ——distinct or not. That is for the court to determine. I am asking you if it is distinct in your mind. A. It is distinct in my mind.

Q. Did you testify that your best memory was that you took the keys out of the ignition?

A. No.

Q. Did you testify to that? Don't give me any explanation, please. A. No; I did not.

Q. Or your best memory was that you took the keys from the ignition; do you remember testifying to that?

A. I remember putting the keys in the ignition.

Q. Didn't you testify that you took the keys out of the ignition?

A. Eventually when I got out of the car, yes.

Q. Then did you take the keys out of the ignition?

A. After I had put them there myself, yes.

Q. You first put them in there yourself?

A. I tried to start the car, you see, [255] afterward.

Q. When you went to search the car, do you remember me asking you this afternoon if you did not go and take the keys out of the ignition? This is only within the past hour. A. Yes.

Q. I want to find out how good your memory

(Testimony of Meyer I. Goodman.)

is with respect to your testimony under oath now.

A. As I recall, my testimony was——

Q. No; did you so testify? Let's not guess about it. I have it marked in the record now.

A. I don't understand.

Q. Didn't you testify that, to your best memory or words to that effect, that you took the keys out of the ignition? Yes or no?

A. No; I don't recall saying that.

Mr. Marcus: Mr. Reporter, will you find that place in the record?

(Whereupon, the reporter read the record as follows:)

"Q. What examination did you make of this car?

"A. I asked him for his keys.

"Q. Yes, sir.

"A. And I think the keys were still in the ignition, as I recall."

Q. (By Mr. Marcus): Now, do you remember testifying to that? [256] A. I said——

Q. Do you remember testifying to that? Please don't make any explanations. Do you remember testifying to that under oath?

A. If that is what the record shows, apparently that would be it.

Q. Is that the truth? Yes or no?

A. I believe I said at the time——

Q. Not what you believe what you said. It is in the record now. Is that statement the truth?

A. That is not the whole statement.

(Testimony of Meyer I. Goodman.)

Q. Is that statement the truth, that you believe that you took the keys out of the ignition?

A. Yes; that statement standing by itself.

Q. That is all I want to know. A. Sure.

Q. That's all I want to know.

A. Everything I have told you is the truth, sir.

Mr. Marcus: That's all. Thank you, very much.

The Court: Do you have any more?

Mr. Bender: Yes, your Honor.

Redirect Examination

By Mr. Bender:

Q. Mr. Goodman, after you made that statement an hour or so ago, that testimony, did you then attempt to make any [257] qualification or explanation of your testimony?

Mr. Marcus: That is immaterial, your Honor.

The Witness: Yes, sir; I did.

Mr. Marcus: And that is no way to rehabilitate a witness.

The Court: I will let him say what he is going to say.

Mr. Marcus: The court is the best judge as to whether or not he made any qualification of that.

The Court: I am going to let him testify.

Q. (By Mr. Bender): Mr. Goodman, would you tell us again and relate to us your understanding of the manner in which you secured the keys to the automobile of the defendant Lozoya on May 17th?

Mr. Marcus: That is calling for a conclusion of

(Testimony of Meyer I. Goodman.)

the witness obviously, as to his understanding. We don't want the understanding. We want the facts.

The Court: I will sustain the objection.

Mr. Bender: I will withdraw it.

Q. Mr. Goodman, would you testify concerning the manner in which you acquired the key or keys to the automobile of the defendant Lozoya?

Mr. Marcus: That obviously calls for a conclusion of the witness. If he asks him how did he get the keys, that's all he has to ask him.

Mr. Bender: All right. [258]

The Court: All right.

Q. (By Mr. Bender): Mr. Goodman, how did you obtain the keys to the automobile of the defendant Lozoya on May 17, 1956?

A. As I recall, I asked Lozoya for them.

Q. What occurred then?

A. And he gave them to me, and I opened the glove compartment with them. I tried the ignition to see if the car would start, and it wouldn't start at the time. I couldn't get it to start, and that is about all we did with the keys.

Q. With reference to this blackboard, I am a little confused, because it seems to have north on the top and a north on the right, and east and west. I wonder if we could turn it around and start all over again.

The Court: Why don't we just use the same map?

Mr. Bender: Because I think it is——

The Witness: I think——

(Testimony of Meyer I. Goodman.)

Mr. Bender: Your Honor, the perspective is not drawn according to the situation.

The Court: Let him explain it, if he wants to.

The Witness: Well, this is Poplar Street, your Honor.

Q. (By Mr. Bender): By "this," which street do you mean? A. This street here.

Q. Which direction does that run? [259]

A. It runs north and south, I believe, and Beverly runs east and west, and the market is on this corner in that relationship, and the gas station is on this corner, your Honor.

Q. Poplar Street runs north and south? Is the position of the east and west correct? It appears to me that it is reversed.

A. I believe it is. I think this is actually the southerly direction, your Honor. This is the notherly direction.

Mr. Marcus: North is to the——

The Witness: Well, not necessarily up.

The Court: In drawing the map, you always put north to the top.

Mr. Bender: Yes, but you put east to the right. They have it backwards.

The Witness: That is right.

The Court: Let him explain it.

Mr. Bender: That is why it doesn't appear that the position of the market——

Mr. Marcus: If it is confused, why not just change the east and west?

(Testimony of Meyer I. Goodman.)

The Witness: I think the north and south should be changed.

Mr. Marcus: It couldn't be. [260]

The Court: Just change the east and west.

Mr. Bender: Your Honor, if you change the north and south, you don't have the correct perspective, because that would then place the service station on the northeast corner.

The Court: How many more questions do you have of this witness?

Mr. Bender: Quite a few, your Honor. I want to go fully into the exact location of——

The Court: Well, draw the map and start that the first thing in the morning. Draw the map the way he wants to draw the map on the other side of the board.

We will adjourn until 10:00 o'clock. Have him draw the map, have him draw it in the meantime, and we will start with that—the way he wants the map drawn. There is a blackboard on the other side, isn't there?

Mr. Bender: Yes, and as I understand that can be erased?

The Court: All right, erase that, and have him draw it after court.

Mr. Bender: The Government at this time again moves to introduce in evidence Government's Exhibits 1-A, 1-B and 1.

Mr. Marcus: Obviously, at this time, I would suggest, because of the character of the testimony

(Testimony of Meyer I. Goodman.)

that has been put on so far, that your Honor reserve——

The Court: I will reserve the ruling.

Mr. Bender: May the Government be heard on that before [261] the court——

The Court: All I am doing is reserving the ruling.

Mr. Bender: Yes, but your Honor, in the event the court is, as has been indicated, unwilling to accept this evidence today, it places us in the position of having to make a decision whether or not to bring the chemist down from San Francisco.

The Court: You don't need the chemist. He has already stipulated in the written stipulation. I understood that was your position.

Mr. Marcus: Yes, your Honor.

The Court: He has already stipulated that the chemist, if called, would testify that, in his opinion, the substance he examined was marijuana, and that is as far as he could go. He is not disputing that.

Mr. Bender: He has stipulated to far more than that. That's the point. If we find tomorrow that we are ready to close and we are not in the position of having the chemist here, and then counsel argues that the scope of the stipulation does not include what we anticipate the chemist would testify to, if we call him tomorrow morning, we would be in the position of not having the witness available to proceed.

The Court: Well, what Mr. Marcus has, and what the court has ruled so far, and reserved rul-

(Testimony of Meyer I. Goodman.)

ing, is that you haven't made the link between that Exhibit 1 and the defendant. [262]

Isn't that your position now?

Mr. Marcus: Yes, your Honor.

The Court: Up to this time I have reserved ruling on it. I never passed final judgment. But he made that point, and that is what I said this morning. He is not contending about——

Mr. Bender: Well, your Honor, it is the Government's position that we have clearly established that link, and I would like to argue that and have it determined today, so that if the court is of the opinion that we have not established that, we may obtain the expert witness.

Mr. Marcus: I am willing to do this with counsel, even though he hasn't tied it up and he has to have the Government witness, and if he has to have the Government witness, under his theory, he can bring him at any time.

Counsel, my position is this. You have not tied up these items here with this defendant. This witness himself has testified that he doesn't know that this is the same stuff that was taken out of the car. The other witnesses testified that he doesn't know that that stuff came from this defendant. That is the link.

Mr. Bender: The Government's answer to that is that it is totally immaterial whether they know that or not. I don't think any Agent has, in any narcotic case, to testify that it was the same stuff. It is impossible of identification [263] of a handful

(Testimony of Meyer I. Goodman.)

of marijuana out of a sack as being the same marijuana that was placed in the sack.

Mr. Marcus: I am not concerned about what happens in other cases.

The Court: They are just putting you to your proof. Mr. Marcus is advancing that thought. That is what I thought this morning.

Mr. Marcus: That is correct.

The Court: That is the argument he is making.

Mr. Bender: The Government's position is that that has been satisfied. I would like to go fully into the Government's position concerning the background.

The Court: I think the thing for you to do, if you feel that way, is to have the reporter read you the testimony of the Narcotics Agent, who said—Mr. Marcus took him on cross-examination and he used the words, he said "absolutely," that he did not know that this was the substance that this defendant was supposed to have.

Mr. Bender: Of course, your Honor, and the Government never intended to prove its case by testimony by an Agent to the effect that that agent could identify the same material as being——

The Court: How do you connect Exhibit 1 with the defendant?

Mr. Bender: Very easily, your Honor. Start back with Ramirez having been present when the 10 pounds or so of this [264] stuff was transferred by the defendant into the car of the Agent. Then you have Agent Ramirez weighing it and sealing

(Testimony of Meyer I. Goodman.)

it and mailing it with these bags, Government's Exhibit 1, the bags containing material that resembled marijuana, to the chemist in San Francisco. Surely there is a presumption as to the regularity of the mails. It is sent by registered mail. We then have it received by the chemist in San Francisco. The stipulation says that the chemist, R. F. Love, received Government's Exhibit 1 by registered mail from Joe Ramirez.

The Court: I understood the Agent testified that he couldn't identify this as being the substance taken from the defendant.

Mr. Bender: He identified the burlap bag and all of the paper sacks with his initials contained on them, and states there was substance in it which resembled marijuana. It would be impossible for anyone to identify the exact substance as being what he has mailed, because marijuana is marijuana.

The Court: What is your thought on that, Mr. Marcus?

Mr. Marcus: It is obvious, your Honor, that there has been no testimony at this time in this record to identify this marijuana offered in this courtroom as being the marijuana that was taken from the defendant.

The Court: You were trying to get Mr. Marcus to stipulate [265] to that, and he wouldn't do that. He said he was putting the Government to proof.

Mr. Bender: At this time it is the Government's position that it has been proved, if you consider the

(Testimony of Meyer I. Goodman.)

testimony that has been elicited as well as the stipulation. The stipulation states that Exhibit 1 was received by the chemist from Ramirez. It further says that Exhibit 1 will be identified by Agent Ramirez. He identified it. He identified the paper sack and the bag. The bag is the one he received from the defendant Lozoya. The paper sacks are the ones he received from Lozoya, initialed and forwarded to San Francisco.

The Court: Well, I will have the reporter—we will stand in adjournment, and the reporter will read the cross-examination and the voir dire examination, when you brought that out from the Agent, because somebody used the word "absolutely."

Mr. Marcus: I used it, your Honor.

The Court: You used the word, and I think he said "yes," and I would like to have that testimony, and we will find that place and go on from there.

Mr. Bender: But, your Honor, the Government's position is to concede that the Agent testified that he was not able positively to identify the leafy substance contained in these paper sacks as being the identical substance that he mailed to the chemist in San Francisco. The Government's position [266] is, and we submit it is necessarily so——

Mr. Marcus: Not mailed to the chemist in San Francisco, but what he got from this defendant. That's the point.

Mr. Bender: He testified to that.

Mr. Marcus: He can't identify this substance as

(Testimony of Meyer I. Goodman.)

being the substance that he took from the defendant. It's just that plain.

The Court: We will stand in adjournment and I will have Mr. Swader read it, so you won't have to have the written testimony. You can have him read you that point. Then, in the morning, you can both call my attention to the particular portions. I will rule on the matter at that time.

Mr. Bender: The Government will not be prejudiced, then, will it, by failure to obtain the chemist?

The Court: The chemist has nothing to do with it, really. That doesn't prejudice your case at all. The key to the thing is your Narcotic Agent. You write down what you think is material, and Mr. Marcus will have the page number, and then the question in the morning, tomorrow morning, we can have the reporter read it, if there is any question about it. He should be able to find it fairly quickly. Mr. Marcus asked the key question somewhere along the line. Then I used the expression that you had a "missing link." If you get the court's remark about the "link," that's what we are concerned with. [267]

Mr. Bender: That is the Government's position. There is no such thing as a missing link.

The Court: You advanced that argument this morning.

Mr. Bender: That is correct.

The Court: You have been consistent. You have maintained that the link was in the chain.

Mr. Bender: Yes, your Honor, that is the Government's position, that it is contained within the

(Testimony of Meyer I. Goodman.)

stipulation. If it is the court's position that the stipulation doesn't include it and that the chemist has anything to do with the missing link, as the court has termed it, then the chemist should be here to clear it up. If it is the court's position that the missing link consists of the failure of Agent Ramirez to identify this identical leafy substance as being one he obtained from the defendant, I don't see how any agent could ever clearly identify it.

Mr. Marcus: That is a matter of argument, and that is a matter of putting the Government to proof. As to how they are going to do it is not up to us.

Mr. Bender: Of course, I am arguing that it should be admitted in evidence. This is the time to argue it.

The Court: I understand it. We all three could be mistaken on it. So we will have the reporter read the testimony to both of you and then we can hear you. I could be wrong. But I remember you asked the question and you used the word [268] "absolutely" and the witness said he could not identify it, and I think I used the expression at that time that there was the missing link, in my opinion. I know you disagree with me. [269]

Mr. Bender: May I make one further point, your Honor?

The Court: Yes.

Mr. Bender: That is, that this witness presently on the stand has been qualified as an expert to testify, and he gave his expert opinion concerning whether this substance is marijuana.

(Testimony of Meyer I. Goodman.)

The Court: He has, and that goes to weight and credibility. He has given his opinion that it is marijuana.

Mr. Bender: He has testified that, in his opinion, Government's Exhibit 1, including the substance contained in the paper bags, is presently marijuana and at the time it was obtained on May 17th from the defendant it was marijuana, and on his testimony alone these exhibits should be admissible.

Mr. Marcus: He hasn't testified that this substance that he looked at now——

The Court: All the court is going to do is reserve ruling on the record until the reporter reads you the testimony, and if you stay here the reporter will read it to you now. Then we will resume from there in the morning. We all could be mistaken. I could be mistaken.

Mr. Bender: The minute the Government determines that it is necessary to bring the chemist down, would the court preclude the Government doing that if it means taking an extra day?

The Court: Oh, no. I still say you don't need the [270] chemist. But if you want the chemist, it is all right with me.

Mr. Marcus, you're not advancing that argument?

Mr. Marcus: I am not. The chemist has nothing to do with this.

The Court: In the stipulation, he stipulates that the chemist would testify that it was marijuana, the substance that he examined. He is not contending that.

(Testimony of Meyer I. Goodman.)

Mr. Bender: And that the substance he received from Jose Ramirez—he stipulates that?

Mr. Marcus: That is right. But go one step further. Agent Ramirez says he doesn't know that this stuff is the same that he took from the defendant.

Mr. Bender: But he received it by registered mail, as he testified, from the chemist.

Mr. Marcus: You're talking about the chemist received it by registered mail.

The Court: Well, have him read the record. The reporter is here. We'll catch him right now, and we will start in from that at 10:00 o'clock in the morning. If I am mistaken, I'll admit my mistake. It is hard to remember all this testimony in these narcotic cases.

(Adjournment until Thursday, July 19, 1956, at 10:00 a.m.) [271]

Thursday, July 19, 1956—9:30 A.M.

The Court: All right, Mr. Bender, did your witness draw the map on the board?

Mr. Bender: We had just commenced doing that this morning, your Honor.

Mr. Marcus: Does your man have the exact measurements, Mr. Bender?

Mr. Bender: That I don't know.

Mr. Marcus: I have a map drawn on this, and I have the exact measurements. If it will be of any assistance, you may use it.

Mr. Bender: I see you have the east on the right this time.

Mr. Marcus: You may put it right up there.

Mr. Bender: May I have a moment to look at the map, your Honor?

The Court: Certainly.

(A pause.)

(Mr. Bender returns the document to Mr. Marcus.)

Mr. Bender: Your Honor, we have decided to have him draw it on the blackboard, in view of the fact that there are some features about the proffered map that we don't care for.

The Court: All right. [274]

MEYER I. GOODMAN

called as a witness for the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination
(Continued)

By Mr. Bender:

(Witness draws on the blackboard.)

Mr. Marcus: Shouldn't that east and west be changed?

Mr. Bender: No; that is correct now; east is on the right.

The Witness: I wanted to draw it to coincide with the way you have it, Mr. Marcus.

(Testimony of Meyer I. Goodman.)

Mr. Bender: No; draw it the way that it is, Mr. Goodman.

The Witness: All right.

(Witness drawing on the blackboard.)

The Witness: This is Beverly, this is Poplar (marking the diagram).

Q. (By Mr. Bender): Mr. Goodman, the way I have observed your map drawn, the north is at the top, south, of course, is at the bottom; east is to the right; west is to the left; that is correct, is it not?

A. That is correct.

Q. And you have two areas dotted in?

A. Yes.

Q. What is the area that is dotted in? [275]

A. The area that is dotted in signifies the extent of the parking area behind the structures.

Q. Directing your attention to the area that is dotted in, in the northeast corner, the upper right-hand corner, what area does that represent?

A. That entire area represents the gas station and the parking area surrounding it.

Q. Would you draw an X indicating the approximate position of the government vehicle that you say you were near in the company of Agents Cantu and Miller on May 17, 1956?

A. We were right here—right there (indicating).

Q. Approximately how far is that spot indicated as being right here from the intersection or corner of the northeast boundary? By that I mean, start-

(Testimony of Meyer I. Goodman.)

ing from the north and going in a southerly direction until you reach Beverly Boulevard and being on the east side of Poplar—in other words, at the point I am indicating with my finger?

A. Yes.

Q. How far is it from this point, approximately, to where your car was parked?

A. Oh, it would have to be a very rough estimate, Mr. Bender. I didn't at any time measure it, but I would guess perhaps between 75 and a hundred feet perhaps, or maybe even a little more.

Mr. Marcus: Pardon me just a moment. What does that [276] 75 or 100 feet he has given us a rough estimate of?

The Witness: From this corner here to where our car was at the gas station——

Mr. Marcus: That is, he indicated on the map from the northeast corner of Poplar and Beverly Boulevard directly east to a point where his car was parked on the parking lot.

Mr. Bender: Yes; on Beverly Boulevard.

The Witness: That is right.

Q. (By Mr. Bender): What does the dotted area and the printed M signify or indicate at the southeast or lower right-hand portion of the map?

A. The dotted area indicates on the southeast portion the extent of the market and parking area—the entire land, so to speak, of the parking area.

Q. Would you draw the approximate size of the Beverly Ranch Market?

(Testimony of Meyer I. Goodman.)

A. Yes. It would be a little larger than this probably.

Mr. Marcus: Counsel, I have the exact measurements here. It was measured. If you want to accept it instead of guessing on this thing, it might be of some assistance to the court.

Mr. Bender: Well, he is giving his best recollection.

Mr. Marcus: I know, but we have the exact measurements.

Mr. Bender: Well, if you have them, you had a perfect opportunity to present them [277] yesterday.

Mr. Marcus: I didn't have the exact measurements yesterday. They were made last night.

The market is 124 feet frontage on Beverly Boulevard.

Mr. Bender: Well, counsel, you, of course, will have the opportunity to present that.

Mr. Marcus: Why guess about this witness' testimony, if he doesn't know?

Mr. Bender: He is giving his best estimate, just as any witness is permitted to give his best estimate.

The Court: I will permit him to give his best estimate. Go ahead.

The Witness: That is approximately the size of the market, in comparison to the size of the station, perhaps a little bigger or a little smaller.

Q. (By Mr. Bender): Is the market, then, larger in area than the station?

(Testimony of Meyer I. Goodman.)

A. The market itself?

Q. Is larger than the station structure?

A. Oh, yes; of course, quite a bit larger. The gas station structure itself is comparatively small in comparison.

Q. In an easterly direction off of Poplar Street, would the area that you have indicated be the point indicated where his car was parked, did that extend as far or less or farther east than the easterly edge of the market itself?

A. Did the parking area extend further east than—— [278]

Q. Yes; where your car was parked, was it further east off of Poplar than the most easterly edge of the Beverly Ranch Market?

A. Oh, yes; a good deal further east of the structure of the building of the market itself. The parking area where we were located and the car we were situated in.

Q. Now, would you place the position of the Government's vehicle which was occupied by Agent Ramirez, the position on the Beverly Ranch Market parking area?

A. Yes; by this little line, I would say, just about there (indicating), with its back wheels up against it looked like a tree stump, one of those tree stumps as a stop laying on the ground.

Mr. Bender: Counsel, will you stipulate that the witness has marked an area on the Beverly Ranch Market parking lot which is farther east off of

(Testimony of Meyer I. Goodman.)

Poplar than the most easterly extremity of the Beverly Ranch Market?

Mr. Marcus: Yes, sir; for the purpose of the record, although I am not stipulating to the proof.

Mr. Bender: Of course not.

Mr. Marcus: I am stipulating to the fact that he has marked it as such.

Q. (By Mr. Bender): Now, Mr. Goodman, would you mark the area where you testified the defendant and the 1940 or '41 Chevrolet automobile was first parked and stopped when it [279] entered the Beverly Ranch Market parking lot?

A. Yes. It first came to a stop right about here at this dot right there.

Q. And in which direction was it facing when it first came to a stop?

A. It was facing this way. It had come in from this direction and was facing this way.

Q. Facing east?

A. Facing east, yes. Then the car backed around into this position here.

Q. Meaning into a parallel position with the government car?

A. Parallel; that is correct.

Q. And at that time both cars were then facing in a northerly direction?

A. They were both facing me as I was looking south.

Q. Mr. Goodman, did you teach the identification of the cannabis plant at the time you were teaching chemistry? A. Just as one of the lessons.

(Testimony of Meyer I. Goodman.)

Q. Will you explain what the cannabis plant is?

A. The cannabis plant is a plant which is indigenous to most temperate areas of the world and is a plant which I have seen growing up to a height of seven or eight feet. It is a very distinctive plant in that there are several characteristics of it which are differentiated from all others, [280] and that is that the combination of things such as the saw-toothed margin of the eliptical leaf—the leaf is an eliptical shaped leaf, a long, narrow eliptical shaped leaf, and that has a saw-toothed type of margin all around the edge. That leaf grows on the end of a frond type or palm type stalk, coming from the branches—the main stalk of the plant. A very characteristic thing, and one which we use to identify the plant very often with, is the fact that each leaf, each hand of the leaf always grows in odd numbers. In other words, it is either three leaves on a palm, five leaves on a palm, seven leaves on a palm, nine, eleven or even up to thirteen leaves, single individual leaves on each palm.

Another very characteristic thing about the plant is that each pair of branches on the main stalk grows alternately, and by alternately the individual means that each pair of stalks grows alternate to the one below or above it. In other words, if the main stalk is the trunk of my body and there are two stems coming off the trunk, your Honor, these grow in this direction, the next two above it will grow at exactly right angles, then the next two above it will grow like that (indicating), and al-

(Testimony of Meyer I. Goodman.)

ways the leaves are in odd numbers. It's a very characteristic and significant thing.

Q. Did you teach this identification of the cannabis plant to the pupils?

A. Yes; I did. [281]

Q. What is the color of this cannabis plant at the time it is growing?

A. It is a bright green leaf.

Q. After it has been cut and permitted to dry, does it change color?

A. Yes; it changes in color all the way down to a pale brown to a buff color I have seen it.

Q. What characteristics does it retain that you can identify by physical inspection and examination?

A. It retains the characteristic and distinct odor, it retains the clustered mottled type of seeds that are attached to the leafy material, it retains the portions of the calcium carbonate, little calculi or stones in the glandular parts of the leaf. Those are among a number of things it retains.

Q. What is a common understanding or word to indicate or mean, or correlate with the cannabis plant? What is the cannabis plant?

A. The cannabis plant is commonly known as the hemp plant. It is the hemp.

Q. And what is the hemp plant known as?

A. It has many slang terms, of course.

Q. Is one of them marijuana?

A. Yes, marijuana. It is called—just called plain weed. That is a very common expression.

(Testimony of Meyer I. Goodman.)

Q. Or stuff? [282]

A. Stuff, grass. Out here on the West Coast I have noticed they use a number of terms that are not used in the east; they call it grass very often here. "Can I have a pound of grass?"

Q. Are you familiar with any of the expressions that are used to designate marijuana in Spanish?

A. Not too well. I don't speak——

Q. Do you speak Spanish?

A. No; I don't.

Q. As I recall, you testified that you made an examination or inspection of the automobile of the defendant at Beverly Ranch Market on May 17th; is that correct? A. That is correct.

Q. Did you make some comment to one of the other officers after you had looked in the automobile of the defendant? A. Yes; I did.

Q. What comment was that?

Mr. Marcus: That is objected to as being hearsay and self-serving, whatever it might happen to be, your Honor.

Mr. Bender: Your Honor, the Government will withdraw that question and ask a further—one or two further foundational questions.

The Court: All right.

Q. (By Mr. Bender): Mr. Goodman, was this comment made [283] in the presence of the defendant? A. Yes.

Q. Approximately how far from you was the defendant at the time you made this comment?

A. About five or six feet.

(Testimony of Meyer I. Goodman.)

Q. What did you say to the other officer?

A. I said——

Mr. Marcus: Just a minute, please. Your Honor, whatever he might have said to another officer in the presence of the defendant, unless it would call for a reply, in the first place, it would be immaterial; in the second place, he might have said a thousand things, but it wouldn't make any difference as far as this case is concerned—it would be immaterial.

The Court: I'll overrule the objection.

Mr. Bender: As a matter of fact, the question was asked by counsel and answered yesterday, and I objected to it.

The Court: He may answer it.

Mr. Bender: Thank you.

The Witness: As I came out of the car, after searching it, I recall saying to several of the other officers who were standing close to the defendant, "There is no more stuff in the car. We might as well go down town," or words to that effect, and he was standing right there.

Q. (By Mr. Bender): Now, Mr. Goodman, you testified [284] yesterday concerning the conversations that took place at the scene of the arrest at the Beverly Ranch Market parking area. Do you at this time recall any further conversations that occurred that you did not testify to yesterday?

Mr. Marcus: He was asked that question yesterday, if your Honor recollects, and he specifically inquired of this witness whether there was anything

(Testimony of Meyer I. Goodman.)

in addition to what he has stated was said there or done there at the time, and he said there wasn't.

Mr. Bender: That is not a basis for objection, your Honor.

Mr. Marcus: It is objected to because it has been asked and answered, your Honor.

The Court: I'll sustain it on the latter ground. It has been covered.

Q. (By Mr. Bender): At the scene of the arrest on May 17, 1956, did you have any conversation with Agent Ramirez? Did you say anything to him?

A. Well, at that time——

Mr. Marcus: Yes or no, please. That would call for a yes or no answer.

The Witness: Yes.

Q. (By Mr. Bender): What did you say?

Mr. Marcus: That is objected to as being immaterial and hearsay, your Honor. [285]

The Court: I will let him answer. I will overrule the objection. He may answer.

The Witness: I said to Ramirez, who, at that time, was taken as an alleged defendant along with Lozoya, "Whose car is this black Mercury?" And he replied something to the effect that it was his girl friend's car, as I recall now. That was about the extent of it. There was very little more said.

Q. (By Mr. Bender): And you now recall that you made that statement to him?

A. I remember saying words to that effect, and he replied it being his girl friend's car, that it was not his car, and the defendant was standing there.

(Testimony of Meyer I. Goodman.)

Q. Did you recall that yesterday at the time you testified? A. It was very——

Mr. Marcus: Just a minute, please. Your Honor, that is no way to rehabilitate a witness. This witness was never asked that direct question yesterday and he responded that he had no memory with respect to that conversation.

Mr. Bender: I'm not rehabilitating him. I'm only asking him when he recalled this.

Mr. Marcus: It wouldn't make any difference when he recalled it. He testified to it this morning. That is proper for cross-examination. [286]

The Court: I'll sustain the objection.

Mr. Bender: No further questions, your Honor.

Recross-Examination

By Mr. Marcus:

Q. Mr. Goodman, when both cars on the market parking lot came to a stop parallel to one another, was the front end of each of the cars facing you?

A. The front end of each of the cars?

Q. Yes. A. Yes.

Q. And the rear end was further away from you?

A. That is right; the length of the car.

Q. Therefore, isn't it a fact, sir, that anybody walking or doing anything or performing any act at the rear of the automobile, from the position that you were standing—— A. Yes.

Q. ——would be to the rear of the cars that were

(Testimony of Meyer I. Goodman.)

parked on the parking lot? A. Yes.

Q. So if there was any movement to the rear of the automobile, the body of the car, the top of the car would be between you and the persons that were in movement at the time on that parking lot of the market? A. Partially.

Q. Well, the body would be between you, [287] wouldn't it? A. Partially.

Q. Well, sir, if you can tell me how a piece of a body and not the entire body would be between you where you were standing at this position, as you claim, marked X, and the people who were moving to the rear of the automobiles, I would like to have you explain that to the court.

A. That's very simple.

Q. All right; you come down to the board and—first, let me lay a preliminary preface here. Mark 1 and 2 for the rear of the automobiles that were parked. A. Where do you want 1 and 2?

Q. Just to the rear of the automobiles.

A. Which automobile do you want?

Q. Both of them—it doesn't make any difference, one or the other.

Mr. Bender: Indicate which one you are marking, Mr. Goodman.

The Witness: I mark No. 1, the defendant's car, and No. 2, Ramirez' car.

Q. (By Mr. Marcus): You were at position X?

A. That is correct.

Q. And was the movement between the two cars

(Testimony of Meyer I. Goodman.)

at the rear of the cars when you say something was transferred from one car to another?

Mr. Bender: The Government objects on the ground that [288] there is a question pending which has not been answered.

Mr. Marcus: I am laying a preliminary statement first.

Mr. Bender: You asked the witness to explain.

Mr. Marcus: Let me withdraw the question.

Mr. Bender: I suggest that he be permitted to explain.

Mr. Marcus: May I withdraw the question?

The Court: The question is withdrawn.

Q. (By Mr. Marcus): Now, sir, were the cars 1 and 2 parallel to each other?

A. That is correct.

Q. Were they both facing toward the north?

A. That is correct.

Q. Now, sir, you said that the parts of the body of the car were not between you as you were facing south and the people who were in movement in positions 1 and 2 and you said you could explain that to the court. Explain to the court how portions of the body of the automobiles were not between you.

A. Which do you want me to explain now?

Q. Go ahead and make the explanation.

A. I'll be happy to. It was a very simple matter for me to see right to the rear and see both these individuals. There was a space between the two cars.

Q. Just a moment, Mr. Goodman.

(Testimony of Meyer I. Goodman.)

Mr. Reporter, will you read the question?

The Witness: I heard the question. [289]

Mr. Marcus: Just listen to it again. I didn't ask you what you could see. That will be for the court to determine, what you could see.

Q. My question was, propounded on the basis of your answer that you said that portions——

A. You asked me how I could see.

Q. Just a moment, Mr. Goodman, please. I asked you whether or not any portions of the car, the body and the top, were not between you and the people who were in movement, and you said yes.

A. I said partially.

Q. Partially? A. Yes.

Q. Now I'm asking you to explain how portions of the car were between you and the people in movement and portions of the car were not between you and the people that were in movement?

A. Between me, or between my view. I didn't say what you said.

Q. I didn't ask you about any view at all.

A. Oh, between me and the car?

Q. Yes.

A. Well, the entire car would naturally be in front of me, and the rear of the car would be to the back of the front portion of both vehicles. [290]

Q. Both cars and the entire portion of both cars were between you and the people who were in movement to the rear?

A. Naturally; that's correct.

Q. How far apart were these cars?

(Testimony of Meyer I. Goodman.)

A. Oh, the usual parking space (indicating).

Q. Describe what is usual.

A. I don't know. I didn't measure it.

Q. Well, you looked down there and apparently you saw, as you claim you saw——

A. I would say maybe ten feet apart.

Q. They were that far apart?

A. Approximately; maybe eight, ten feet. I'm just estimating it.

Q. And this movement took place between the two cars and from the front of one car to the trunk of another? A. Yes; that's correct.

Q. And you observed that when the trunks of both cars were up; is that right?

A. That is correct.

Q. Take the stand again.

Mr. Goodman, did you see somebody open the trunk of the car from where you were standing?

A. Which car?

Q. Either car.

A. I saw Lozoya go to the back of his car and open the [291] trunk.

Q. And you could see that from where you were?

A. I most definitely could.

Q. And the car—please wait until I finish the question. A. I'm sorry.

Q. From where you were standing, you could see him open the rear of the trunk of the car?

A. I could.

Q. Yes or no?

A. Do you mean did I see him put a key in it or

(Testimony of Meyer I. Goodman.)

what? I saw him go to the rear of the car and the trunk was then opened.

Q. Did you see the trunk open?

A. I saw the trunk open, yes.

Q. That answers it. Just answer yes. Did you see the trunk of the other car opened?

A. Yes.

Q. And the entire front of the car was between you and Mr. Lozoya, wasn't it? A. Yes.

Q. And you could see from where you were standing him open the trunk of the car and the top of the trunk open up; is that correct?

A. That is right. [292]

Q. Then you saw him take something out of the trunk? A. That is correct.

Q. Now, Mr. Goodman, you know it is a human impossibility—— A. That is untrue.

Mr. Bender: Just a moment. The Government objects——

Mr. Marcus: You don't know what the question is yet, do you?

The Witness: Well, you said it is a human impossibility.

Mr. Bender: To that question the Government would like to interpose an objection, first, that it is argumentative, and, second, that it is asking for a conclusion of the witness, your Honor.

The Court: Yes. I'll sustain the objection on the grounds that it is argumentative.

Q. (By Mr. Marcus): Now, you say you taught the plant cannabis?

(Testimony of Meyer I. Goodman.)

A. It was just one of the brief subjects that was covered in——

Q. Would you answer me one question yes or no?

Mr. Bender: The Government objects to this statement by counsel as being beyond the bounds of permissible questioning for an attorney. His comment in that regard should be directed to the court, to request the court to instruct the witness to answer, and he has repeatedly throughout this [293] trial evidenced the approach of telling the witness what to do and what not to do.

Mr. Marcus: I didn't tell him what to do or what not to do. I asked him if he could give me a yes or no answer.

The Court: I'll overrule the objection.

Q. (By Mr. Marcus): Could you answer the question yes or no, Mr. Goodman?

A. I'll try.

Q. Did you teach the cannabis plant to a class?

A. Yes.

Q. What class was that?

A. It was a class—I think it was several classes I had in which that was discussed. There was one class at the university in which we had a class in materia medica, which is the study of the appearance, action, uses of various botanical drugs and other drugs; and then the other class——

Q. Just tell me what class it was. Could you tell me the name of the class, and what university?

A. Yes; class in materia medica at the Middlesex University.

(Testimony of Meyer I. Goodman.)

Q. Middlesex University? A. Yes.

Q. And you were the instructor there?

A. I was the instructor in that class, yes.

Q. Did you have an instructor's permit or license to [294] instruct at the time?

A. Well, I was employed by the university. There was no license required.

Q. You didn't have a teacher's license to teach in the university, did you?

A. The university did not require one.

Q. That was not my question. A. No.

Q. Did you have a——

A. I don't recall having one.

Q. ——a teacher's certificate to instruct at that university? A. In Massachusetts?

Q. I don't know where it is, sir.

A. Well, it's in Massachusetts.

Q. All right, it's in Massachusetts. Now tell me if you had a teacher's permit.

A. Universities do not require——

Q. I don't know what they require. I'm only asking you if you had a teacher's certificate?

A. No.

Q. You say that you instructed on the plant cannabis? A. That is correct.

Q. What is the entire name of the cannabis plant?

A. Cannabis sativa, cannabis indica—there [295] are various genera.

Q. You say it comes from the hemp plant?

A. That is the common name of the plant or one

(Testimony of Meyer I. Goodman.)

of the varieties is the common name for the hemp.

Q. Is there any name in addition to hemp plant that you know?

A. Well, it's called cannabis plant.

Q. Yes, sir; you've told us that.

A. There may be other synonyms for the name. I don't recall them offhand.

Q. Mr. Goodman, isn't the common name of cannabis sativa known as Indian hemp?

A. Cannabis indica; I said that.

Q. I didn't say "indica"; I said Indian.

A. Indica is Indian.

Q. You have told us that the plant itself, the leaves were in odd numbers; is that right? [296]

A. Yes; very characteristic.

Q. And you gave us some discussion concerning the various branches coming out perpendicularly to each other? A. That is correct.

Q. I assume, sir, that, basing your testimony upon that knowledge, when you looked at this sack, as you claim that you did at the time you determined that it was marijuana because the portion that you looked at showed the leaves to be horn-type and that the branches protruded perpendicularly to each other; is that right?

A. I did not use that as a——

Q. You didn't? A. I did not.

Q. You didn't use that knowledge, did you, to testify?

A. I did not use those, because they were not present in this material.

(Testimony of Meyer I. Goodman.)

Q. So it was not of any assistance to you, was it?

A. Assistance in what? In——

Q. In determining whether this plant was cannabis sativa?

A. That knowledge didn't play a part, no.

Q. I want you to look at this twig here. Is this cannabis sativa?

A. It is impossible to tell which variety it is right now.

Q. I didn't ask you which variety it is. [297]

A. I don't know.

Q. You can't tell whether this is cannabis sativa or commonly known as marijuana, can you?

A. Well, that is marijuana. That is cannabis. Whether it is the sativa or the indica—I might explain to you. I think you are confused.

Q. I don't want any explanation, sir. I am just asking you to tell me again—you have already told us you can't tell. Now, look at it again.

A. Can't tell what?

Q. That it is marijuana.

A. I said no such thing.

Q. You said no such thing?

A. That's right.

Mr. Marcus: Just a minute.

Mr. Bender: Read the record.

The Witness: Let's read the record.

Mr. Marcus: Yes; go back and read the record.

(Whereupon, the reporter read the record as follows:)

(Testimony of Meyer I. Goodman.)

"Q. Is this cannabis sativa?

"A. It is impossible to tell which variety it is right now.

"Q. I didn't ask you which variety it is.

"A. I don't know.

"Q. You can't tell whether this is cannabis [298] sativa or commonly known as marijuana, can you?

"A. Well, that is marijuana. That is cannabis. Whether it is the sativa or the indica—I might explain to you. I think you are confused."

Mr. Bender: Did you hear that, your Honor? The answer was, "Well, that is marijuana."

The Court: Yes.

Mr. Marcus: You heard it all, did you, your Honor?

The Court: Yes.

Q. (By Mr. Marcus): Do you see the stems growing perpendicular to one another on that plant?

A. All——

Q. Just answer yes or no, please. Do you see it?

A. This is dried marijuana.

Q. I know, but the stems are on there, aren't they? A. They are dried up.

Q. Look at the stems, will you?

A. All plants shrivel, you see.

Q. Look at the plant, will you?

A. I see it. My eyesight is very good.

Q. That's fine. Do you see any stems growing perpendicular to each other, as you indicated to the court a while ago? A. At this time, no.

(Testimony of Meyer I. Goodman.)

Q. Do you see the stems on there? Look at it, please. [299] Do you see stems on there?

A. Might I explain to you?

Q. No; just answer.

A. This is not a stalk.

Mr. Marcus: Will your Honor instruct the witness——

The Court: Just answer the question.

Q. (By Mr. Marcus): Do you see the stems growing on that plant? A. No.

Q. You don't see any stems? A. No.

Q. Let me show it to you. You understand, Mr. Goodman, that you are on the witness stand and under oath?

A. Which stems do you mean? I don't understand. I'll explain to you. There are no stems on this particular part. This is one of the fronds. I am trying to explain to you. You refuse to——

Q. Now, look at this.

A. Do you know how wide the main stalk of the hemp plant is? Sometimes three or four inches wide —the main stalk. This is nothing more than a little frond of the end of the plant. This is where the fingers come out. I am trying to show you this.

Q. I understand what you are trying to show us. Do you see where the leaves grow? Do you see any leaves on there. [300]

A. These are dried up leaves.

Q. Dried leaves?

A. Yes; dried up. Dried up leaves.

(Testimony of Meyer I. Goodman.)

Q. The leaves grow on the little branches, don't they? A. That's right.

Q. You see the branches?

A. These grow as fingers on a hand.

Q. Do you see the little branches there?

A. These are the remains of leaf stalks. That's what they are.

Mr. Marcus: I think the court can see the leaves and can observe the stems.

Q. And the leaves, sir, are growing on the small stems, aren't they?

A. The leaves are attached to the leaf stalks.

Q. I want you to look through this sack here and see if you can find any stems in this entire stalk that have the various branches growing perpendicular to one another. A. I can't.

Q. You can't, can you? A. That's right.

Q. Will you look through the——

A. I don't have to look through the entire—this is dried marijuana. You will not find that condition existing here. This is a fresh plant I was describing before growing [301] in the field.

Q. The only difference between the fresh plant and this plant is that this plant is dry?

A. Or shriveled up; that is right.

Q. Look at the various places where the little stems come out from that. A. Yes.

Q. Do you see that? A. Yes.

Q. Do you see them perpendicular to one another?

A. I am trying to state this is not a main stalk.

(Testimony of Meyer I. Goodman.)

Q. Can you answer that yes or no?

A. It is impossible. You don't understand.

Q. Do you see any of the little branches where the leaves are growing perpendicular to one another on there?

A. The perpendicular refers to the main stalk of the plant and the branches coming out of it. And this is a tertiary or quadrary diminution of them, your Honor.

Q. Will you answer the question yes or no, please? Do you see any of the branches upon which the leaves are growing here perpendicular to one another? Do you?

A. I can't answer that question for you because it is misleading to the court.

Q. You won't answer that, will you?

A. I will, if you want me to, just to merely say words, [302] I will positively answer you.

Q. You answer the question, Mr. Goodman.

A. Yes.

Q. Do you see any of the branches from this branch? A. From that piece of marijuana?

Q. Yes; growing perpendicular to one another?

A. I do not.

Q. You do not? A. Yes, sir.

Q. Now, you look at this little pile here, sir, and tell me whether or not you are able to discern any leaves on the plant?

A. This is shriveled, dried marijuana.

Q. Please answer the question.

A. Months old.

(Testimony of Meyer I. Goodman.)

Q. Please answer the question, will you? Do you see any leaves on this plant?

A. In the shriveled form, yes.

Q. All right, sir; pick out any one of these and take it in your hand, will you, sir? Now, do you see the shriveled leaves there? A. Yes.

Q. Do you see and are you able to discern any texture from those shriveled leaves?

A. Not in this form. [303]

Q. Do you see any horn-shaped?

A. I didn't say horn. You mean serrated?

Q. Well, I call it horn-shaped. You call it serrated. A. There's a great difference.

Q. All right. Do you see any serrated outline of the leaves that you have examined?

A. Not in this form.

Q. Now, examine all the rest of it there that is in front of you and tell us whether you can discern the serrated form of any leaf on any of that object?

A. I will save the court's time and say it is impossible to do that now.

Q. It is impossible to do it? Now, what other way do you have of ascertaining, besides by looking at it, examining the texture, examining the leaves and by smelling it, from your knowledge of marijuana and you taught in the university, of ascertaining whether or not a certain plant is marijuana or not? A. The very characteristic——

The Court: Just a moment.

(An interruption at this point.)

(Testimony of Meyer I. Goodman.)

The Court: I have to take a phone call. It is time for the morning recess anyway.

(Recess.)

The Court: Have Mr. Goodman take the stand again. [304]

Q. (By Mr. Marcus): Mr. Goodman, is it not a fact, sir, that the parking area of the market is much larger than the parking area of the service station? A. Much larger?

Q. Yes.

Mr. Bender: The Government objects to the question on the ground that it asks for a conclusion of the witness—much larger. It is vague, indefinite and uncertain.

The Court: I will overrule the objection. You may answer.

The Witness: The parking area of the market probably is larger than the parking area of the gas station. It probably is.

Q. (By Mr. Marcus): Do you have any idea as to the width of the entire parking area and the station, that is, the entire lot, which includes the gasoline station of the service station?

Mr. Bender: The Government objects to that question on the ground that it is asking for a conclusion of the witness, his opinion as to whether he has any idea as to the comparative measurements.

The Court: I will overrule the objection.

The Witness: I don't know what the dimensions

(Testimony of Meyer I. Goodman.)

are, but if you have them there I will accept your figures, Mr. Counsel.

Q. (By Mr. Marcus): Well, sir, I didn't make this map and it was given to me, but I will ask you whether or not, [305] in your opinion, the entire width of the service station lot, including the parking area, is approximately 125 feet?

A. That could possibly be so. It probably is.

Q. All right, sir. Now, is it a fact, sir, that the market building alone across the street is 124 feet wide?

A. You mean the entire width of the market——

Q. Building.

A. ——is just one foot less than the entire area?

Q. One foot less than the entire frontage of the parking area of the service station?

A. I don't think it is.

Q. You don't know, do you?

A. I am pretty sure from this parking area——

Q. You are directing your attention now to the service station?

A. To the service station parking area—extends a considerable distance beyond the ending of the market across the street.

Q. Now, sir, is it a fact that the entire area of the parking lot frontage, including the market, is 181 feet?

A. That could quite possibly be so. It is larger. I know that. It is considerably larger than the parking area across the street.

Q. Yes, sir; that is, of the service station?

(Testimony of Meyer I. Goodman.)

A. That is correct; yes. [306]

Q. Now, sir, both market and service station face Beverly Boulevard, do they not?

A. That is correct.

Q. Is it a fact, sir, that from the front of the drive-in on the market, which faces Beverly Boulevard, in a straight line to the rear of the lot is approximately 143 feet? A. I don't know.

Q. Do you have any opinion at this time with respect to the distance?

A. I don't have any particular opinion. I can't say. If you want me to estimate what I think, it might be over a hundred feet. It probably is.

Q. 143 feet? A. It could possibly be so.

Q. Is there a sidewalk in front of the market?

A. Yes.

Q. And do you have any opinion with respect to the width of that?

A. I don't know what the width of it is.

Q. Do you have any opinion with respect to the distance from curb to curb of Beverly Boulevard at that point?

A. Well, your drawing says 57 feet. That could be so.

Q. If the sidewalks on both sides of the street are 10 feet—— [307] A. Yes.

Q. ——you would add—— A. 20 feet.

Q. ——20 feet to the 57 feet as the distance between the respective buildings, wouldn't you?

A. That is approximately correct.

Q. Then as between the respective buildings and

(Testimony of Meyer I. Goodman.)

including the street of Beverly Boulevard, you would have approximately 77 feet, wouldn't you?

A. Will you repeat that again?

Q. As between the two buildings, that is, the market building and the service station, including Beverly Boulevard, the distance between those two points would be approximately 77 feet?

A. That would be quite possible.

Q. Now, sir, your car was not parked on the sidewalk, was it?

A. No; it was right there at the edge of the sidewalk.

Q. Right at the edge at the driveway?

A. In the parking area, yes.

Q. Now, from the point of the edge of the building of the service station to the rear of the lot, where you say the cars were parked, would be a distance of 143 feet plus 77 feet, would be approximately 220 feet from where your car was parked to where the other cars were parked; is that correct? [308]

A. Except for one discrepancy which I can point out to you. Our car is parked ahead of the actual building and the gas station, you see, so that it is parked about right here, right at the edge of the curb—right about there.

Q. Yes, but you see, I didn't go back to the building. I only took the sidewalk.

A. No; you added 10 and 67 and made 77 out of it.

Q. Yes; there is a sidewalk here.

(Testimony of Meyer I. Goodman.)

A. That is correct.

Q. So I am only taking to the edge of the sidewalk, and you said your car was not parked on the sidewalk?

A. Not on the sidewalk; right at the edge of the sidewalk.

Q. So you take 10 feet from this sidewalk in front of the service station? A. Yes.

Q. You take the 10 feet of the sidewalk in front of the market, plus the 57 feet, the width of the street itself, you would have 77 feet; is that correct?

A. That is correct.

Q. Plus the 143 feet, or a total of 220 feet from where you were standing?

A. Very possible; yes.

Q. This was 7:30 at night, wasn't it?

A. That is correct. [309]

Q. And, I understand, sir, that you could tell the features of these men who were back of the car and you could identify Mr. Lozoya for that distance of 220 feet at 7:30 at night?

A. It was not difficult at all.

Q. Did you recognize him?

A. I did; yes. I so testified.

Q. All right, sir.

Mr. Marcus: I would ask your Honor at this time if the court could go out in the hallway, because we don't have enough measurement here, and we will mark off approximately the end of the hallway and your Honor could ascertain whether or not

(Testimony of Meyer I. Goodman.)

you could tell features under the lights of this hallway that distance.

Mr. Bender: The Government objects to that request on one ground: It is not a question whether the——

The Court: I will sustain the Government's objection.

Mr. Marcus: That will be all.

The Court: That's all.

Is that all?

Mr. Bender: I have a few additional questions, your Honor.

The Court: All right.

Mr. Marcus: May I ask one more question?

The Court: Yes. [310]

Q. (By Mr. Marcus): Did you see this man have a black eye or bleeding from his face or his ear at the time he was out there talking to you?

A. No, sir. You mean at the gas station?

Q. No; at the market.

A. At the market? No; he didn't. I didn't recognize such a thing.

The Court: Go ahead, Mr. Bender.

Redirect Examination

By Mr. Bender:

Q. Mr. Goodman, did you see the lid on the trunk of the defendant's car go up? A. I did.

Q. Did you see the lid on the Government con-

(Testimony of Meyer I. Goodman.)

vertible go up? A. Yes, sir; I did.

Q. Was there anything between you when you saw the defendant Lozoya carry the bag from the rear of his car to the rear of the Government car?

A. Nothing.

Mr. Bender: No further questions.

Mr. Marcus: Just one question with respect to that.

Recross-Examination

By Mr. Marcus:

Q. There was traffic? [311] A. There was.

Q. Automobiles on Beverly?

A. There was some; yes.

Q. That was between you and what was going on in the other car, wasn't it?

A. There was some traffic traveling up.

Q. That obstructed your vision, didn't it?

A. No.

Q. The cars coming between didn't obstruct your vision? A. Not one bit.

Mr. Marcus: That's all.

Redirect Examination

By Mr. Bender:

Q. Were these cars that were passing—did they stop and remain between you and your vision of the defendant carrying the bag? A. They did not.

Mr. Bender: That's all.

The Court: Is that the Government's case?

(Testimony of Meyer I. Goodman.)

Mr. Bender: No, your Honor; we have two additional witnesses.

The Government at this time renews the motion with respect to the proposed exhibits.

The Court: I will let Exhibit 1 be received at this time rather than have further argument. It is for the court [312] to pass on the matter. I will let it be received.

Mr. Bender: And also Exhibits 1-A and 1-B, your Honor.

The Court: That's right. I will allow them to be received in evidence.

(The exhibits referred to, marked Plaintiff's Exhibits 1, 1-A and 1-B, were received in evidence.)

The Court: Where is the next witness?

Mr. Bender: I believe he is in the attorneys' cloakroom, your Honor.

The Court: Can you get him?

Mr. Bender: Yes, sir.

MICHAEL GULLON

called as a witness for the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Michael Gullon.

Direct Examination

By Mr. Bender:

Q. Mr. Gullon, what is your full name?

A. Michael Gullon.

(Testimony of Michael Gullon.)

Mr. Bender: Your Honor, to make certain the exhibits of the Government are in order, it is my understanding that Government's Exhibit 1 for identification, Government's Exhibit 1-A and Government's Exhibit 1-B are now in evidence.

The Court: That is right. [313]

Mr. Bender: And that Exhibit 2 is in evidence?

The Court: That is right.

Mr. Bender: And it has been signed by the court?

The Court: That is right.

Q. (By Mr. Bender): What is your present profession or occupation?

A. Federal Narcotic Agent, U. S. Treasury Department.

Q. For how long have you been so employed?

A. Three years, sir.

Q. Directing your attention to on or about May 17, 1956, and to the vicinity of the Beverly Ranch Market at Montebello, California, were you present at the Beverly Ranch Market on that date?

A. Yes, sir; I was.

Q. Approximate date. Approximately what time on May 17th were you present at the Beverly Ranch Market?

A. Oh, from about 7:00 p.m. to about 8:00.

Q. What time did you arrive at the Beverly Ranch Market?

A. I arrived there some time between 6:30 and 7:00.

Q. Was there anyone else with you at the time?

(Testimony of Michael Gullon.)

A. Yes, sir; Agent Freeman was with me.

Q. What did you do upon arrival?

A. Agent Freeman and myself, we took positions close to the market on Beverly Boulevard. [314]

Q. Directing your attention to the blackboard, the diagram that has been drawn here, north being at the top, south at the bottom, east to the right and west to the left, and this is indicated as Beverly Boulevard running easterly and westerly, would you point out the position of the Beverly Ranch Market?

A. (Stepping down to the blackboard.) The market is in the southeast corner of the intersection.

Q. And you have pointed to the chalk indication of the letter M there, have you not?

A. That is correct, sir.

Q. Did the market also have a parking lot or parking area?

Mr. Marcus: Can we stipulate to his testimony with respect to the parking area and so forth, the same as the other?

Mr. Bender: I will cut it much shorter, counsel.

Q. Did it? A. Yes; it was.

Q. Where were you? What position did you take up with reference to the market and the parking area of the Beverly Ranch Market?

A. I was on the sidewalk section east of the market in this position right here.

Q. On which side of Beverly?

A. I was on the east side of Beverly. [315]

(Testimony of Michael Gullon.)

Q. You have indicated Beverly as running easterly and westerly?

A. Oh, I see. The southern part of Beverly.

Q. In other words, then, you were on the sidewalk which is on the same side of the street as the Beverly Ranch Market? A. That's correct.

Q. But you were easterly of the actual Ranch Market itself? A. That's correct.

Q. Approximately how far were you from where you stood on the sidewalk to the most southerly extremity of the Ranch Market parking area—your approximation?

A. I don't know the exact distance, but it could have been anything between 80 to 100 feet.

Q. Now, what did you observe occur on that date after you took up your position there on the sidewalk easterly of the Beverly Ranch Market—what happened?

A. Some time around 7:30 the defendant, who is in the courtroom——

Q. Would you point out the defendant?

A. Yes, sir; the gentleman with the glasses.

Mr. Bender: Mr. Lozoya, please stand.

(The defendant stands.)

Q. (By Mr. Bender): Is this the gentleman you refer to? [316] A. That's correct, sir.

Q. Thank you.

A. The defendant, I observed, approached the intersection from the west side. He stopped for a little while. He was driving a Chevrolet, as I recall.

(Testimony of Michael Gullon.)

Q. Excuse me, Mr. Gullon, but by that you mean he approached in a Chevrolet going easterly on Beverly? A. That is correct.

Q. In an easterly direction, and he approached the intersection of this Beverly Ranch Market. What did he do then?

A. He stopped for a red light. He then made a right turn.

Q. On what street?

A. On Poplar Street and entered the market through the west side.

Q. After he made the right turn on Poplar Street, did he remain in your vision?

A. No, sir; he was out of my vision from this corner until the time I observed the car in the parking lot itself on the easterly side of the parking lot.

Q. What did the car do after you observed it again on the easterly portion of the parking lot? Where did it go?

A. The defendant stopped the automobile in front of Agent Ramirez' automobile that was already parked there.

Q. So which direction, then, was the [317] defendant's automobile facing at the time it first stopped?

A. As I recall, he was facing east.

Q. And which direction was Agent Ramirez' automobile facing at this time?

A. It was facing north. He was parked. He backed his car against the embankment here at the rear of the parking lot.

(Testimony of Michael Gullon.)

Q. What occurred then?

A. I observed the defendant stopped his automobile. Agent Ramirez left his automobile and talked to the defendant. He seemed to be talking to him. The defendant then backed up his car and he was parallel with the Government car.

Q. In other words, he parked it in a parallel position with the Government car?

A. That's correct, sir.

Q. Approximately how much distance separated the two automobiles?

A. Oh, about this much (indicating).

Mr. Marcus: Four feet?

Mr. Bender: Four or five feet.

The Witness: Four or five feet.

Mr. Marcus: Well, that is less than four feet. Do that again, please.

The Witness (Indicating): Well, I don't know, some distance about this wide. [318]

Mr. Marcus: Would your Honor give an estimate on that for the record?

The Witness: It is about this distance.

Mr. Marcus: Three feet.

The Court: Well, would you say about three? Wouldn't you?

Mr. Marcus: That is correct; about a yard.

Q. (By Mr. Bender): About how many feet do you think it was, Mr. Goodman?

Mr. Marcus: Not what he thinks. He has already indicated what it was.

The Court: How much do you think it was?

(Testimony of Michael Gullon.)

Well, we have it, I think. Go on to the next question.

Q. (By Mr. Bender): What happened then?

A. I then observed the defendant leave his automobile again and engage in a conversation with Agent Ramirez and after a few minutes elapsed or some time like that, I observed the defendant walk to the rear of his automobile that was parked there and I lost him from view for a second.

I then for the next 30 seconds observed the defendant carrying a big brown sack to the rear of Agent Ramirez' car—automobile. I could see part of the trunk of Agent Ramirez' car lifted and I observed the defendant, he was in a way of a hunch, carrying the bag to Agent Ramirez' car.

After that the trunk of the Ramirez car, the door of it [319] was locked again or placed down, and then I observed the defendant talking again with Agent Ramirez.

At the prearranged signal, which was a banana peel to be thrown to the ground by Agent Ramirez, I ran between the two cars and I arrested all three persons in there.

Q. You say you ran between the cars?

A. Well, I ran from the sidewalk.

Q. In a southerly direction?

A. Yes, sir; parallel to the wall of the market, and then I went and ran between the two cars, because at that time the defendant and Agent Ramirez and a special employee were almost between the two cars talking.

(Testimony of Michael Gullon.)

Q. In which direction was the defendant Lozoya facing at this time?

A. The defendant was facing south.

Q. In other words, he had his back to you?

A. That is correct.

Q. Which direction was Agent Ramirez facing?

A. Well, Ramirez was at an angle. He was facing this area this way. He could see me coming, though.

Q. Sort of a northwesterly direction?

A. Northwest direction; that's right.

Q. What did you do upon arriving in the vicinity of the three persons?

A. I arrested all three persons there at gun point. I identified myself as a Federal Narcotic Agent, and they [320] were all placed under arrest.

Q. While you were still back on the sidewalk, that easterly portion of the Beverly Ranch Market proper, who was with you, if anyone?

A. Agent Freeman was with me.

Q. What did he do before he proceeded to go forward in a southerly direction to make the arrest? What did he do? Where did he go?

A. Well, Agent Freeman was to go through the market itself and exit through the rear door of the market.

Q. Then he had split from or left you at some time, did he not? A. That is correct, sir.

Q. And approximately where, in the point of your standing on the sidewalk, with reference to the time that you ran forward, about what time did

(Testimony of Michael Gullon.)

he depart? A. Departed about the same time.

Q. Approximately the same time?

A. Approximately the same time.

Q. When you were running forward, did you see Agent Freeman?

A. No; I didn't, sir. I didn't see him until the time after I made the arrest, and as soon as I made the arrest I observed Agent Freeman to my right and his assistant, and a few seconds later I observed Agent Goodman came up and [321] Agents Miller and Cantu.

Q. Would you relate what occurred at the time of the arrest? What was said, if you recall, by everyone who was present at this time and in the presence of the defendant?

A. As I stated before, I stated I was a Federal Narcotic Agent, showed them my badge. I then—oh, I then waited a few seconds. Agent Freeman came up, and Miller and Cantu and Goodman. Agent Goodman, as I recall, asked Agent Ramirez whose car was that, as he pointed to the Government car. Agent Ramirez stated something to the effect that it belonged to his girl friend, something to that effect. Agent Goodman also asked for the keys to the defendant's automobile, and the defendant handed them to him. Agent Goodman made some statement to the effect that there was nothing in the car, as he looked through it. He made an attempt to start the car and it wouldn't start. Agent Miller and I then took the defendant, who was

(Testimony of Michael Gullon.)

handcuffed by this time, into the other Government car. The special employee was also arrested.

Q. Mr. Gullon, was anything done with the 10-pound bag that you say you saw the defendant Lozoya carry over from the trunk from the back of his car——

Mr. Marcus: Just a moment. He didn't say he saw anybody carry a 10-pound bag.

Mr. Bender: Strike the 10-pound. [322]

Q. Was there anything done with the bag you testified you saw the defendant Lozoya carry from the rear of the Government car?

A. Yes; Agent Goodman seized the bag from the Government car, and when I left the area he had it in his possession, as far as I recall.

Q. You didn't hear any conversation, then, between Goodman and the defendant concerning the bag?

A. Agent Goodman, as I recall, he cursed the defendant. He asked him a couple of times about the bag, and the defendant acted—he stated, "What are you talking about?" And Agent Goodman pointed to the bag. And he says, "I don't know what you are talking about." And Agent Goodman used the words and said, "God damn it," and said, "This bag over here." And the defendant just kept saying, "I don't know what you are talking about."

Q. Did you make any examination of the contents of the bag which you saw the defendant Lozoya carry over to the car?

(Testimony of Michael Gullon.)

A. I did some time later in the Bureau of Narcotics office.

Q. Did you place your initials on any of the paper bags? A. I believe I did.

Q. I show you Government's Exhibit 1-B, which is the outer carton and box, and Government's Exhibit 1, which consists of a brown bag—— [323]

Mr. Marcus: If the signatures are on there, I will stipulate that he put his signatures on there when he got down to the Federal Building. Are they on there, or aren't they?

Mr. Bender: There are so many signatures, I don't know.

The Witness: This is my signature.

Q. (By Mr. Bender): That is your signature on one of the paper bags?

Mr. Marcus: It is stipulated that he put his signature on the bag at the Federal Building.

The Court: All right.

Q. (By Mr. Marcus): Did you examine any of the contents of any of the bags?

A. Yes, sir; I did.

Q. What did it appear to resemble?

Mr. Marcus: Let's have a foundation, first. It is objected to on that ground, your Honor, where he examined it.

The Court: All right.

Mr. Bender: He is speaking of the examination at the Federal Building.

Mr. Marcus: That's all right. He didn't say that he did, but I will take it as that.

(Testimony of Michael Gullon.)

The Court: Where did you examine it?

The Witness: The evidence was examined by me at the Federal Building at the Bureau of Narcotics office. [324]

The Court: All right.

Q. (By Mr. Bender): What did the substance which you have examined appear to resemble?

Mr. Marcus: There is no foundation for that—appears to resemble what is in there; that is something else.

Mr. Bender: He can testify that it resembles something else.

Mr. Marcus: You have no foundation as to what it appears to resemble, unless he testifies that he knows what he is referring to, what it may resemble.

The Court: Yes; I'll sustain the objection. Lay a further foundation.

Q. (By Mr. Bender): Mr. Gullon, have you on other occasions observed marijuana in its dry state?

A. Yes, sir; on many occasions.

Q. Did you make any mental comparison between your prior experience of observing marijuana on these numerous occasions and the substance which you saw in the paper sacks which are Government's Exhibit 1 in the Federal Building?

A. Yes, sir; I did.

Q. Did the substance which you observed in the paper sacks appear to resemble any substance which you had seen before? A. Yes, sir; it did.

Q. What substance? [325] A. Marijuana.

Mr. Bender: You may cross-examine.

(Testimony of Michael Gullon.)

Cross-Examination

By Mr. Marcus:

Q. Mr. Gullon, as I understand, when you saw a banana peel drop, you started to run?

A. Yes, sir; I did.

Q. On a prearranged signal you ran back to the rear of the lot? A. That is correct, sir.

Q. What was the first thing you said?

A. "Federal Narcotic Agent. You are under arrest."

Q. You didn't know what was in the sack at the time, did you? Or did you?

A. The prearranged signal was——

Q. Did you know what was in the sack when you ran back and said, "I am a Federal Narcotic Agent. You are under arrest"? Did you know what was in the sack?

A. No, sir; not at that time.

Q. Not at that time? You made an arrest before you knew what was in the sack, didn't you?

A. By prearranged signal I made an arrest.

Q. I am talking about what your knowledge was at the time that you made the arrest. You didn't know what was in the sack, did you? [326]

A. The signal meant it was marijuana.

Q. You didn't see the sack opened before you got there, did you?

A. It could have been opened.

Q. Not what it could have been. Was it opened while you were observing it?

(Testimony of Michael Gullon.)

Mr. Bender: The Government objects to that question on the ground that it asks for a conclusion, your Honor.

The Court: I will overrule the objection.

Mr. Marcus: How could it be a conclusion if I asked him what he saw?

The Court: I overruled the objection.

Q. (By Mr. Marcus): Did you see anybody open that sack? A. No, sir; I did not.

Q. So you didn't see Officer Ramirez open the sack, did you?

A. I saw him bend down and do something with it.

Q. I didn't ask you whether you saw him bend down. I asked you if you saw him open the sack?

A. No, sir; I did not.

Q. You didn't see him take out anything from the sack, did you? A. No, sir; I did not.

Q. Who put the sack from one car to another?

A. The defendant. [327]

Q. The defendant?

A. Yes; that is correct.

Q. And when it got into the Government car, the hood was put back down, wasn't it?

A. Not right away, sir.

Q. I didn't say right away. I said the hood was put down? A. A short time later; yes.

Q. By the time you arrived there, after you started to run, the hood was down, wasn't it?

A. That is correct, sir.

Q. And who had the key?

(Testimony of Michael Gullon.)

A. What key, sir?

Q. The key to the Government car?

A. I don't know, sir.

Q. How did you open the trunk after it was down? A. I didn't open the trunk, sir.

Q. Who opened it?

A. Agent Goodman, I believe, sir.

Q. Were you there when he opened it?

A. Yes, sir; I was present.

Q. How did he open it?

A. I don't recall, sir.

Q. Didn't he have to go to the car and take the key out and open the trunk? [328]

A. What car, sir?

Q. The Government car I am talking about, the one that he opened. Didn't you see him go to the car, take the key out and go back and open the trunk?

A. I don't recall, sir. I don't recall that.

Q. You don't recall that? Did you see him open the trunk?

A. I recall him lifting the trunk, but I don't recall——

Q. Did you see how he opened the lock on the back of the Government car?

A. At that time, sir, I was in charge of a prisoner. I was paying attention to the prisoner.

Q. I am asking you when you saw the trunk lift up—you testified on direct examination that you saw the trunk open? A. Yes; it was open.

(Testimony of Michael Gullon.)

Q. That Officer Goodman took the stuff out and took it into his custody; didn't you?

A. That is correct.

Q. Tell the court how you saw him open the trunk?

A. I don't recall how the trunk was opened, sir.

Q. Did he have a key in his hand?

A. I don't recall, sir.

Q. You don't remember that?

A. No, sir. [329]

Q. All right. You had the defendant in custody, didn't you?

A. Yes, sir; he was under arrest.

Q. You told him he was under arrest for violation of the Narcotics Act, didn't you?

A. No, sir; I didn't tell him that.

Q. What did you tell him—your exact words?

A. I told him I was a Federal Narcotic Agent; he was under arrest.

Q. Would he be under arrest at that time, you believed, for narcotics? Is that right?

A. That was the purpose of it, sir.

Q. Then you didn't know at that time that there was any narcotics at all in the sack, did you?

A. No, sir; I didn't look in the sack yet.

Q. And nobody else in your presence had looked in that sack at that time, had they?

A. I don't know that, sir.

Q. Well, in your presence, what you saw, you didn't see anybody open the sack?

A. I don't recall whether they did or not.

(Testimony of Michael Gullon.)

Q. Well, at least at the time you told him that he was under arrest and that the others were under arrest, you didn't know what was in the sack at all, did you?

A. No, sir; I hadn't looked at the sack. [330]

Q. So you made an arrest not knowing what was in the sack; is that right?

A. I had an idea what was in the sack, sir.

Q. I don't care what ideas you might have had. I asked you whether or not you knew. You said you didn't know. So you made the arrest at the time without even knowing what was in the sack?

A. I made the arrest after a signal by another Agent was given that it was marijuana.

Q. Yes, but you didn't see anybody open anything or examine anything at that time, did you? Did you? A. I'm thinking, sir.

Q. I see.

A. No, sir. If it was opened, I don't recall who did it.

Q. Well, you knew Johnny Villas, didn't you, the other man that was there—you knew him, didn't you? A. No, sir; I did not.

Q. You had never seen Johnny Villas before? Look, we already have established here, so you don't have to deny that this special employee that you talked of a while ago, his name is Johnny Villas. I don't want to put you on the spot, Mr. Goodman, but he has already been identified and his name is Johnny Villas and I happen to know him because I represented another defendant in another case.

(Testimony of Michael Gullon.)

With that [331] explanation, do you know Johnny Villas? A. Yes.

Q. I don't want you to commit perjury on this witness stand.

Mr. Bender: The Government objects to this line of questioning on the ground that it is immaterial.

The Court: The latter statement may go out.

Go ahead and answer the question.

Q. (By Mr. Marcus): Johnny Villas was there, wasn't he?

A. You mean the other person that was arrested with the defendant?

Q. The "special employee" you called him.

A. That is correct.

Q. That was Johnny Villas, wasn't it?

A. I didn't know that, sir.

Q. You didn't know his name?

A. No, sir; I did not.

Q. How long before that had you seen him?

A. I observed the special employee about 15 minutes before he arrived with the defendant.

Q. Well, you knew Ramirez, didn't you?

A. Beg your pardon?

Q. You knew Agent Ramirez before this?

A. Yes; I did.

Q. And you already had the picture in your possession [332] of Lozoya, hadn't you?

A. That is correct.

Q. So the other one would have to be the special agent? A. Oh, yes, sir.

(Testimony of Michael Gullon.)

Q. That is just for the moment.

A. I don't understand what you mean.

Q. That didn't take much of a mental deduction to figure out who the other fellow was, did it?

A. No, sir.

Q. So you knew the other fellow was a special employee at the time?

A. I was told about it 15 minutes before he arrived.

Q. Well, whether you were told or weren't told, you knew Ramirez and you knew Lozoya, so the third one would have to be the special employee, wouldn't he? A. Not necessarily, sir.

Q. Did you see him in the car?

A. Who, sir?

Q. The special employee?

A. Yes, sir; I did.

Q. You had a pretty good idea who he was?

A. Yes, sir; I did, at that time.

Q. You told Ramirez he was under arrest, too?

A. All three persons were placed under arrest.

Q. You remember Ramirez saying that the stuff in the [333] car, he didn't know how it got in there; the car belonged to his girl friend; you remember that, don't you?

A. There was some conversation to that effect, sir, when he was questioned by Agent Goodman.

Q. Agent Goodman was putting on an act there at the time, wasn't he?

A. That is correct, sir.

Q. And he was questioning Ramirez?

(Testimony of Michael Gullon.)

A. Yes, sir.

Q. And Ramirez says, "I don't know how that got into the car," didn't he?

A. He probably did, sir.

Q. Well, you heard him say that, didn't you?

A. Well, I couldn't tell you exactly the full conversation or the exact words; something to that effect.

Q. Was that substantially his language, "I don't know how it got into my car"?

A. Probably; yes, sir.

Q. Then he was asked by Agent Goodman, "Whose car is that?" A. That is correct.

Q. And Agent Ramirez said, "That car belongs to my girl friend. You will have to ask her how the stuff got into the car"; isn't that right?

A. No, sir; it is not right. What I recall is [334] that Agent Ramirez stated it belonged to his girl friend.

Q. The car belonged to the girl friend?

A. That is right, sir.

Q. They then asked Mr. Ramirez how it got in there—I should say Mr. Lozoya, didn't they?

A. I believe they did; yes, sir.

Q. Who asked him?

A. Agent Goodman was asking most of the questions.

Q. What did Agent Goodman say?

A. As I recall, he questioned the defendant regarding the bag.

Q. What did he ask him about the bag?

(Testimony of Michael Gullon.)

A. Something to the effect like, "What about this bag here?"

Q. "What about this bag here" that had come out of the government car?

A. That is correct, sir.

Q. And then what did Lozoya say to that?

A. He says, "What bag?"

Q. "What bag?" And then what did Agent Goodman say?

A. He pointed to the bag and said, "This one here."

Q. And then what did Lozoya say?

A. He still said, "What bag?"

Q. Did he say he doesn't know anything about the bag?

A. He said something to the effect, "I don't know what [335] you are talking about."

Q. "I don't know what you are talking about." Then what did Agent Goodman say?

A. Still questioning him about the bag, he said, "The bag you put in the trunk."

Q. What did Lozoya say about it?

A. I don't recall, sir. He just kept saying, "What bag?"

Q. He denied he had taken any package out and put it in the other car; that he knew anything about the bag all of the time?

A. He made denials all the time; yes.

Q. And then Agent Goodman got mad and started cussing?

(Testimony of Michael Gullon.)

A. Agent Goodman did say, "God damn it" in English.

Q. Well, he started cussing, didn't he?

A. All I recall is the words, "God damn it."

Q. And then some people came up from that area, didn't they, and asked Mr. Goodman not to use any vile, abusive language because of the children around there; don't you remember that?

A. No, sir; that is not true.

The Court: Well, it is noon.

Mr. Marcus: Just one more question, your Honor.

The Court: All right.

Q. (By Mr. Marcus): You talked to Agent Goodman, didn't [336] you?

A. Yes; I talked to Agent Goodman.

Q. When did you talk to him?

A. Many times.

Q. Since yesterday? A. Yes, sir.

Q. Where were you when you talked to him?

A. In the building.

Q. In the offices of the Narcotics Department?

A. Yes, sir.

Q. You talked about what had happened in the courtroom here, didn't you?

A. We talked about everything except his testimony.

Q. Well, you talked about everything except his testimony?

A. Everything as to official business that we conduct every day, sir.

(Testimony of Michael Gullon.)

Q. You talked to him about what happened out there that night, didn't you—that is, on May 17th?

A. I talked to Agent Goodman.

Q. You talked to him since yesterday as to what happened on May 17th?

A. I have talked to him in regard to the market, in regard to——

Q. Where he was standing? [337]

A. No, sir. Like I stated——

Q. Well, you talked about the market. What else did you talk about?

A. In regard to when we would get through with his testimony and when I would come up to testify.

Q. Let's talk about the market. What did you talk about the market?

A. Something to the effect which way was north.

Q. Did you talk about how wide the market was?

A. No, sir.

Q. Anything else about the market?

A. No, sir; just one question.

Q. Did you talk about the width of the parking lot? A. No, sir.

Q. What else did you talk about?

A. That was all I recall.

Q. Well, the market concerned this case, didn't it? A. Oh, yes, sir.

Q. What else did you talk about when you were talking about the market?

A. Just which way was north.

Q. Did you talk about the service station and which way was north? A. No, sir.

(Testimony of Michael Gullon.)

Q. Did you talk about where you were [338] standing? A. No, sir.

Q. Well, you did have a conversation with respect to the facts of this case pertaining to the market since yesterday, didn't you?

A. Oh, yes, sir.

Q. And that took place up in the offices of the Narcotics Bureau?

A. Probably did, sir; yes, sir.

Q. You talked to him out in the hallway this morning, didn't you?

A. Yes; I talked to him this morning.

Q. You talked to him about the facts of this case this morning, didn't you?

A. No, sir; I did not.

Q. What did you talk about this morning?

A. We were talking about a trial that was coming up.

Q. Nothing about this case this morning?

A. No, sir.

Q. That took place yesterday?

A. That is correct, sir.

Q. That is after he testified in the afternoon?

A. I don't recall when it was, sir.

Q. Before you leave——

Mr. Bender: May the record show that counsel stated there was going to be one more [339] question?

Mr. Marcus: The record shows that.

Q. Will you tell us about how far it is from where you are seated on the witness stand to the

(Testimony of Michael Gullon.)

back of this wall where I am standing now—how far is it back here?

A. I don't know, sir. It is pretty hard to tell.

Q. Give us an estimate of the distance, your best estimate. Can you estimate it, please?

A. Do you mind if I think, sir? It might take some time.

Q. While you are thinking, can you tell me what this is? What is this?

A. You are holding a brown-colored object in your hand, sir.

Q. This is a brown colored?

A. Dark brown from over here; that is right.

Q. Let me bring it up to you. What color is that?

A. It still appears brownish, but with a greenish color in it now.

Q. I am up facing you. What color is that?

A. It is a combination of green and brown in it, sir.

Q. Did you see this bag at any time before today? A. Could I see the bag, sir?

Q. Just look at it from where you are, and you are only at least ten feet, approximately ten feet from it.

A. There are thousands of bags like that in town, sir. [340] If I find my initials, it is the same bag I saw that day.

Q. Not whether it is your initials. I am trying your memory now. Is that bag green?

A. A combination of green and brown.

Q. What color is all this area in here (indicating)?

(Testimony of Michael Gullon.)

A. To me it seems like a very dark green-brownish appearance from a distance.

Q. Did you ever see this before today?

A. Like I stated, I have seen many bags like that before.

Q. Can you tell us, yes or no, whether you have seen it before today?

A. I have seen many bags like that before, sir.

Q. Have you seen this bag before today? Just yes or no or you don't know.

A. I don't know what you refer to, sir.

Q. I know you don't. Just tell me what your best memory is as to whether or not you have seen this bag before today?

Mr. Bender: The Government objects on the grounds that this question has been asked four or five times and he has answered.

Mr. Marcus: He is only ten feet from me now.

Mr. Bender: He wants to inspect the bag.

Q. (By Mr. Marcus): Can you, yes or no? [341]

A. Can I do what?

Q. You can answer it yes or no or I don't know.

A. To what?

Q. To my question as to whether or not you have ever seen this bag before?

A. I have seen many bags like that before, sir.

Mr. Marcus: Your Honor——

The Court: Just answer yes or no or you don't know.

The Witness: Yes; I have seen bags like that before.

(Testimony of Michael Gullon.)

Q. (By Mr. Marcus): That still doesn't answer the question. Have you ever seen this bag before?

Mr. Bender: Your Honor, I submit the witness should be permitted to inspect the object before he is asked to answer whether he can identify it or not.

The Court: Answer the question. Can you answer the question?

The Witness: I have to inspect the bag, your Honor.

Q. (By Mr. Marcus): Then you can't tell from where you are seated whether you have seen this bag before or not? Is that the answer?

A. No; I have seen a bag before like that.

Mr. Marcus: That is all.

May the record show that this is Government's Exhibit 1?

Mr. Bender: A portion of Government's Exhibit 1.

Mr. Marcus: Yes; just the bag. [342]

The Court: All right.

We will recess. Make it 2:00 o'clock. That's all for the record.

Mr. Marcus: If the court please, would you be kind enough to instruct this witness not to discuss the evidence in this case with anyone else?

The Court: Yes, the witness is instructed not to discuss the evidence.

Mr. Marcus: Except you, Mr. Bender.

The Court: With anyone except the attorney.

(Noon recess.) [343]

Thursday, July 19, 1956—2:00 P.M.

MICHAEL GULLON

called as a witness for the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination
(Resumed)

By Mr. Marcus:

Q. You testified upon direct examination that part of the time your view was obstructed with respect to the other two cars; is that correct?

A. No; that is not correct.

Q. You could see everything that was going on to the rear of those cars at all times?

Mr. Bender: The Government objects to the question on the grounds that it asks for a conclusion of the witness that he could see everything that was going on behind the cars.

The Court: I will overrule the objection. He may answer.

Mr. Marcus: I'll reframe it, your Honor.

Q. Did you see everything that was going on to the rear of those two cars?

A. I saw what I testified to, sir.

Q. Well, you testified, did you not, that your view was obstructed part of the time with respect to the persons [344] and their activities to the rear of those two cars? A. That is correct, sir.

Q. Is that correct? A. That is correct.

Q. What obscured your view?

(Testimony of Michael Gullon.)

A. The position of the car.

Q. You mean part of the car obscured your vision because of its position?

A. That is correct.

Q. The front of the car was facing toward you, was it not? A. That is correct.

Q. The body of the car was facing toward you, was it not?

A. I don't understand that part about the body. What part of the body?

Q. Well, I mean the top of the car, the side of the car, the fenders?

A. Well, the car was facing me.

Q. That was a cause of obscuring your vision, too, wasn't it?

A. As to what happened to the rear of that certain car.

Q. Is that correct?

A. That is correct, sir. [345]

Q. You said that the car was separated about three or four feet?

A. I didn't say the distance. I measured it (indicating). You people took it for granted.

Q. Just measure it again.

A. (The witness indicating.)

Q. That is all that separated the two cars?

A. About that much; yes, sir.

Q. How far away were you from the rear of the two cars? Well, let's lead you a little bit here. Is it a fact, sir, that you were at least 143 feet from those two cars?

(Testimony of Michael Gullon.)

A. I couldn't tell you the distance, sir. Like I said before, anything between 80 to a hundred feet.

Q. You were standing on the sidewalk up in here some place?

A. You are pointing to the street, sir. I was in the——

Q. Well, on the sidewalk?

A. I was on the sidewalk and sometimes in the parking lot itself. I would be walking up and down. I never was in a standing position at all during the whole transaction.

Q. You were toward the front of the building, were you not, sir?

A. I was at the corner of the building; not in front of it.

Q. Well, the corner of the building, that faces on [346] Beverly; is that correct?

A. Like I said before, sir——

Q. I don't know what you said before. Now I am asking you the question: Were you on the corner of the building that was facing Beverly?

A. No; the corner was facing—the eastern part of the building adjacent to the wall.

Q. That is the wall that ends on Beverly, isn't it? This is Beverly Boulevard right here?

A. Yes.

Q. This is the wall you are talking about?

A. That is correct, sir.

Q. And you were walking up and down this sidewalk and on that sidewalk and on the entrance of that parking lot, weren't you?

(Testimony of Michael Gullon.)

A. That is correct, sir.

Q. So you were up in this area on the sidewalk and near the wall at the time that this transaction was supposed to have taken place?

A. That is correct, sir.

Q. This car was at an angle from you, wasn't it?

A. No, sir; it was not at an angle.

Q. Well, from where you were standing up in here, the cars were parked in the rear, weren't they?

A. In the rear of what, sir? [347]

Q. At the rear of the parking lot?

A. They were to the——

Q. Were they at the back of the parking lot? Let me put it that way.

A. They were at the back of the parking lot in the eastern section of the parking lot.

Q. We'll come to that in just a moment. They were at the rear of the lot. I think you said there was a log back there?

A. I didn't mention any log, but they were at the embankment—there is a sort of embankment there.

Q. That is at the rear of the lot, isn't it?

A. That is correct, sir.

Q. That was to the rear of the building, was it not? A. Yes; that would be the rear part.

Q. Isn't it a fact that the distance is approximately 143 feet from the rear of the lot to the sidewalk?

A. I have never measured the distance, sir.

Q. I know you haven't. I'm asking, is it approxi-

(Testimony of Michael Gullon.)

mately that distance? A. I don't know, sir.

Q. Now, there are homes along in here, or courts, aren't there, right along that walk there?

A. I believe so.

Q. Did you see people back there that [348] evening? A. Yes, sir; I saw people approach.

Q. Did you see any people you recognize in the hall here that were there that evening?

A. No, sir; I do not.

Q. After you put this man under arrest, did you get in the car with him? A. What car, sir?

Q. Any car? I didn't say what particular car. Did you get in a car with the man after you placed him under arrest?

A. Yes, sir; he was placed in the government car. He was then transported to the Federal Building.

Q. Were you with him? A. Yes, I was.

Q. All of the time? A. Yes, sir.

Q. Who else was along with you?

A. Agent Miller, Bureau of Narcotics.

Q. This boy kept maintaining he didn't know anything about that, didn't he?

A. That is correct.

Q. You got him down to the building here. Where did you take him?

A. We took him to our office on the 17th floor and he was taken to the interrogation room. [349]

Q. Have you got an interrogation room, too?

A. Yes.

Q. How long have you been with the Narcotics

(Testimony of Michael Gullon.)

Department? A. Three years, sir.

Q. Did you talk to him in Spanish?

A. There was some words mentioned in Spanish, but I never had a full conversation in Spanish.

Q. Was Agent Miller with you, too?

A. Not all of the time.

Q. I didn't ask you if it was all of the time. Was he with you?

Mr. Bender: Your Honor, the Government requests that counsel make his question more definite. It has not been stated here what time he is speaking of.

Mr. Marcus: I am going to develop it. I am just asking him if he was with him. I will ask him when as soon as I find out if he was alone or not.

Q. Was he with you that evening?

A. What part of the evening?

Q. At any time during that evening, was he with you?

A. Yes; at the time we took the defendant to the Government car, Agent Miller was driving.

Q. Was he with you when you got to the office here?

A. Yes; Agent Miller was with me. [350]

Q. When you first saw him, did he have a black eye? A. No, sir; he did not.

Q. Did he have any lacerations about his head or about his body that you could see?

A. No, sir; he did not.

Q. You took him up to the interrogation room?

A. Yes, sir.

(Testimony of Michael Gullon.)

Q. He continued to maintain his innocence, didn't he?

A. He continued to deny anything; yes, sir.

Q. Then who struck this defendant?

A. I did, sir.

Q. You're a Government officer, aren't you?

A. That is right, sir.

Q. And you are under instructions not to put a hand on the prisoner, aren't you?

A. We are under instructions to protect ourselves at all times.

Q. You are instructed not to beat a prisoner?

A. We are instructed to protect ourselves.

Q. When did you strike him? When was this? Was this in the interrogation room?

A. That is correct, sir.

Q. Who was there at that time?

A. It was only the defendant and myself.

Q. Just the two of you? [351]

A. That is correct.

Q. There were officers coming in and out all of the time, weren't there?

A. Yes, sir; that is correct.

Q. And there were a lot of other officers in the adjoining room, weren't there?

A. As I recall, there was.

Q. Well, Officer Goodman was there, wasn't he?

A. Agent Goodman——

Q. Goodman?

A. ——and I believe Agent Cantu——

Q. Agent Cantu?

(Testimony of Michael Gullon.)

A. ——were with Agent Ramirez.

Q. Agent Ramirez? You had four or five officers there, did you not?

A. At least three that I can remember right now, sir.

Q. And each of you took turns to talk to him or examine him or interrogate him, didn't you?

A. No, sir.

Q. You're the only one that interrogated him?

A. I don't know what the other Agents did, sir. I can testify to what I did, sir.

Q. Well, he was in a room by himself; is that correct? A. That is correct, sir.

Q. When you brought him to the building here, didn't [352] you tell him, "Why don't you try to escape, you son of a bitch, and we will have this case over with"? A. No, sir; I never did.

Q. Did you use words to that effect?

A. I never did, sir.

Q. Is it a fact, sir, that you used vile and abusive language toward him in the interrogation room?

Mr. Bender: The Government objects to the question on the ground that it calls for a conclusion of the witness, as to whether his language was vile and abusive, your Honor.

The Court: Yes; I'll sustain the objection.

Q. (By Mr. Marcus): Did you tell him, "You son of a bitch, you had better talk or we will finish you off in this room"?

A. No, sir; I never did.

(Testimony of Michael Gullon.)

Q. What did you tell him when he refused to do any talking?

A. That was his right to refuse. I didn't tell him anything.

Q. I know it is his right, but what did you tell him? A. I kept on talking to him.

Q. What did you say to him there?

A. I kept on asking him in regard to the sack of marijuana and to his connection.

Q. What did he say? [353]

A. He kept on stating that he didn't know what I was talking about.

Q. Didn't he tell you he didn't know about any marijuana around there?

A. Well, he stated that—he says, "You're a Treasury Agent. You find out. You're the smart one."

I asked him again, "Well, how about the transaction—the carrying the package?"

He says, "I don't know what you're talking about."

Q. He says, "I don't know what you're talking about"? A. That is correct.

Q. He kept saying that over and over again?

A. That is correct, sir.

Q. Did you then strike him? A. No, sir.

Q. What did you hit him with?

A. My fist, sir.

Q. How many times did you hit him with your fist? A. Oh, about two or three times.

Q. Did you hit him in his eye?

(Testimony of Michael Gullon.)

A. I don't recall sir. I hit him, the front of his body at some point.

Q. What did he say to you at that time?

A. He didn't say anything.

Q. You just hit him and he didn't say [354] anything?

A. No, sir; he didn't say anything.

Q. Did you hit him in his ear?

A. I don't recall, sir.

Q. Did you knock him out? Did you knock him to the floor?

A. He fell against the wall, sir.

Q. And did he fall to the floor?

A. No, sir.

Q. You searched him, didn't you?

A. I advised him to place all his credentials and all his possessions on the top of the table.

Q. Did you search him?

A. After all his personal property was on top of the table, I searched him for weapons.

Q. Did you find any? A. No, sir.

Q. Well, when he fell to the floor, did you kick him?

A. I didn't say he fell down, sir. I said he went against the wall and then he stood up again.

Q. He fell against the wall and then he stood up again?

A. Well, he just held himself against the wall.

Q. Did you kick him then?

A. No, sir; I didn't kick him.

Q. Didn't you kick him with your shoes on his

(Testimony of Michael Gullon.)

legs? A. No, sir; I did not. [355]

Q. Did you book him at the county jail?

A. No, sir; I did not.

Q. Do you know who booked him?

A. No, sir; I don't.

Q. Did you ever go over there to examine the booking certificate?

A. I don't have any reason to look at the certificate.

Q. Well, do you know, as a matter of fact, that they did not photograph this man at any time after he was booked? Do you know that?

A. First time I heard about it, sir.

Q. Did you leave any instructions with the Sheriff's office not to take any pictures of this man?

A. No, sir. I didn't book him. I never talked to the sheriffs about him.

Q. Did you give any instructions to any other officers or did you officers talk about directions to be given the sheriff not to take any pictures of him?

A. I'm not the agent in charge. I am only an agent. I don't give instructions up in the office.

Q. Did you talk it over with the other officers not to have any booking pictures taken of him, or at any other time? A. No, sir.

Q. Do you know who booked him there?

A. No, sir. [356]

Q. Do you know who went over to the county jail with him? A. No, sir.

Q. You say you searched him. You found no

(Testimony of Michael Gullon.)

weapons on him, he kept maintaining his innocence, and then you struck him; is that correct?

A. No, sir; that isn't correct.

Mr. Bender: The Government objects to this entire line of questioning on the ground that there is no evidence of a confession or admissions made by this defendant at the county jail or after he was booked, and this entire testimony is irrelevant—it has nothing to do with it.

Mr. Marcus: It is part of the res gestae and it goes to consciousness of guilt—it goes to denial at all times.

The Court: I have let it in. You have about covered everything with him, haven't you?

Mr. Marcus: That is right. That is all.

The Court: That's all.

Redirect Examination

By Mr. Bender:

Q. Mr. Gullon, relate just what happened in connection with this striking of the defendant. What occurred?

A. Well, after we—after I took him to the interrogation room, I took his handcuffs off and——

Q. Just a moment until Mr. Marcus is finished talking. [357] Continue.

A. Are you through, Mr. Marcus?

Q. Go ahead.

A. I'm sorry. After the handcuffs were taken away from him—I did that personally—I asked the

(Testimony of Michael Gullon.)

defendant to take all his personal property from his pockets, which he did, and place on top of the desk. I searched him for weapons. There was none.

I then asked the defendant to step next to the fingerprint equipment. We have to fingerprint the defendants. I took an FBI fingerprint card out to fingerprint him. I grabbed his left hand to fingerprint him. At that time the defendant pushed me against the wall and raising his right hand. Doing so, I fell backwards, and then I struck him and we had a scuffle and I subdued him and I then handcuffed him to the chair that is in the interrogation room.

Q. Did you ever kick the defendant?

A. No, sir; I didn't have no cause to do it.

Q. Now, directing your attention to the two automobiles that were on the parking lot over at the Beverly Ranch Market, you say you observed both cars parked in parallel position facing in a northerly direction and that you saw a defendant, this defendant Lozoya, carrying a bag from his car to the Government vehicle; is that correct?

A. That is correct, sir. [358]

Q. Just before you saw him carry the bag from the back portion of his car toward the Government vehicle, did you see the lid or the deck of the automobile in a raised position?

A. Yes, sir; that I could see; it was in a raised position.

Q. Did you at any time see the lid or deck of the Government car in a raised position?

(Testimony of Michael Gullon.)

A. Yes, sir; I could see part of it, a small section of it.

Q. You say you could or did see?

A. Yes, sir; I did see a small section of it.

Q. And this was at the time that the transfer was being effectuated? A. That is correct.

Q. At the time you testify you saw the defendant carry the material to the Government car?

A. That is correct, sir.

Q. Did the bag which you saw defendant carry to the Government car in general resemble the bag that I have in my hand? A. Yes, sir; it did.

Q. I am standing about the same distance from you that Mr. Marcus stood earlier today?

A. Yes, sir. [359]

Q. Would you inspect the bag, which is a portion of Government's Exhibit 1, and tell us if you have ever seen it before (handing the exhibit to the witness)? A. Yes, sir; this is the same bag.

Q. I observe some initials in the upper left-hand corner or the upper portion. Do you recognize any of those initials? A. Well, the initials of——

Q. M.I.G.—do you know whose those are?

A. Those are Agent Goodman's initials. At the time the initials were placed there, I observed Agent Goodman place his initials there.

Q. What is this R.E.N.—do you know what that is?

A. No, sir. My initials are blurred on here.

Q. You recognize Agent Goodman's, though?

A. Yes, sir; those are Goodman's.

(Testimony of Michael Gullon.)

Q. Whose initials are B.W.P., do you know, or is that a P? A. This is Freeman.

Q. Oh, B.W.F.? A. Freeman.

Q. Is he a Narcotics Agent?

A. Yes, sir; Freeman.

Robert E. Miller.

Q. R.E.M. indicates Robert E. Miller? [360]

A. My initials are blurred on here. My initials are small. I made them with a small pen. But those are the initials of the other agents.

Q. When were those initials placed on this Government's Exhibit 1, the burlap bag, do you recall?

A. I placed my initials there at the time the evidence was in the office of the Bureau of Narcotics.

Q. Did you also place your initials on any of the paper sacks which were contained?

A. Yes, sir; I did.

Q. Where were these paper sacks contained, or did you ever observe it? A. Inside the bag.

The Court: He already testified to that, didn't he?

Mr. Bender: I don't recall his identifying the initials, your Honor. I know Agent Goodman did.

The Court: I thought he testified from the exhibit.

Q. (By Mr. Bender): Would you inspect the bags or any of the bags? Inspect this one. That is one of the bags in Government's Exhibit 1.

A. Yes; here are the initials M.G.

Q. Do you recognize any of the other initials on any of the bags?

(Testimony of Michael Gullon.)

A. Meyer Goodman—Agent Goodman.

Q. Who else? Anyone? [361]

A. Agent Freeman, Agent Miller, Agent Ramirez. That is all I can recognize here.

Q. Are these the bags that were obtained from defendant Lozoya?

A. Yes, sir; they are the same identical bags.

Q. Mr. Gullon——

Mr. Bender: Your Honor, I didn't go into this on direct examination and I wonder if the court would object to going briefly into the duties of a Federal Narcotics Agent with respect to what they are to do with material obtained from the defendant in a narcotics case?

The Court: I don't think we need to do that. We have taken so much time in this case already. We have covered everything they did in this particular case. That is all the court is concerned with.

Mr. Bender: Yes, your Honor.

No further questions.

Recross-Examination

By Mr. Marcus:

Q. Just one question, sir. What is the name of the tall, blond officer who was in this courtroom or around this courtroom yesterday in connection with this case?

Mr. Bender: Did you say in this courtroom?

Mr. Marcus: He was in here and then he went out.

(Testimony of Michael Gullon.)

Mr. Bender: During the court in session? [362]

Mr. Marcus: I didn't say he was in here during court in session, but he was in the courtroom.

Q. What was his name?

A. You mean Agent Miller?

Q. I don't know his name. Is there a man by name of Agent Miller? A. Yes; there is.

Mr. Marcus: Permit me one moment, your Honor.

Q. Did he come into the room when you were beating this defendant?

Mr. Bender: The Government objects to this question on the ground that counsel is assuming something that is not in evidence when he says "beating this defendant."

Mr. Marcus: He testified himself that he struck him several times about the body.

The Court: Overruled. You may answer.

Q. (By Mr. Marcus): Did he come into the room at that time?

A. At the time that I fought with the defendant, nobody came into the room.

Q. Did Mr. Miller come in there?

A. A short time later one of the Agents came in, one or two of the Agents came in after the defendant——

Q. Was it Mr. Miller came in?

A. I don't recall, sir. [363]

Q. Didn't you say, "Miller, take over. Be sure and don't mark him up"? Do you remember saying that?

(Testimony of Michael Gullon.)

A. No, sir; I never did give such instructions or mention anything like that.

Q. Did you see Miller beat him, too?

(A pause.)

Q. Did you?

(No answer.)

Mr. Marcus: That's all. You may step down.

Mr. Bender: Just a moment. I submit there is a question asked.

Mr. Marcus: If he doesn't answer it, I am not going to press him. His silence is more obvious than the answer would be.

Mr. Bender: Give him an opportunity to answer, counsel.

Mr. Marcus: He doesn't take the opportunity.

The Witness: At no time did any Agent, in my presence, beat anybody up. I was the only one that fought with the defendant.

Q. (By Mr. Marcus): The defendant never struck you, did he?

A. Yes, sir; he struck me first and pushed me against the wall.

Q. You said he pushed you against the wall. As you were coming back from against the wall, you began striking [364] him?

A. Well, we exchanged blows.

Q. You didn't say that before, did you?

A. I said the defendant struck at me and I hit him back.

(Testimony of Michael Gullon.)

Q. By the way, he was wearing his glasses at the time, wasn't he? A. That is right, sir.

Q. And you knocked his glasses off, too, didn't you? A. No, sir, I did not.

Mr. Marcus: That's all.

The Court: That's all.

Mr. Bender: Your Honor, the Government has another witness.

The Court: Have this witness bring in the other witness.

Mr. Bender: Yes.

Mr. Gullon, would you ask——

(A pause.)

The Court: Is this the witness you want?

Mr. Bender: Yes, your Honor.

The Court: All right.

Mr. Bender: Mr. Freeman, will you take the stand—Bill Freeman.

Mr. Marcus: Counsel, is Agent Miller [365] available?

Mr. Bender: I believe he is out on assignment, but I think we can obtain him for you. Perhaps we can ask Mr. Freeman if Miller is available. I know he was in the office and indicated he had an assignment he preferred to go to, and I told him I didn't need him.

Mr. Marcus: Do you want to stipulate that his testimony will be substantially the same as the last witness?

Mr. Bender: Well, "substantially" is a big step,

counsel. I would rather put him on and have his testimony.

The Court: Well, let's make it brief. We are three days on a marijuana case.

Mr. Bender: I know. I have never taken this long on any narcotics case, conspiracy and all.

The Court: Take the stand.

BILL W. FREEMAN

called as a witness for the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Bill W. Freeman.

The Court: All right, don't have him go over the same ground that you have covered. Ask him anything different.

Direct Examination

By Mr. Bender:

Q. Mr. Freeman, what is your profession or occupation?

Mr. Marcus: I will stipulate that he is an [366] agent.

Mr. Bender: That he is a Federal Narcotics Agent?

Mr. Marcus: Yes.

Q. (By Mr. Bender): For how long have you been so employed?

Mr. Marcus: I will stipulate to that. How long has he been employed?

Mr. Bender: Let him tell us.

(Testimony of Bill W. Freeman.)

The Witness: 21 months.

Q. (By Mr. Bender): Directing your attention to on or about May 17, 1956, at about 7:00 o'clock in the evening, in the vicinity of the Beverly Ranch Market at the intersection of Poplar and Beverly Streets in Montebello, California, were you present at that place at that particular approximate time?

A. Yes.

Q. With whom were you present?

A. I was standing with Agent Gullon near the Ranch Market.

Q. We have here a general rough descriptive drawing on the blackboard indicating north at the top, south at the bottom, east to the right, west to the left of this intersection. Would you approach the drawing and point out to the court approximately where the Beverly Ranch Market is located with reference to that drawing?

A. This is the market here on the corner. [367]

Q. Is there a sidewalk that parallels that market on Beverly Boulevard? A. Yes.

Q. Going in an easterly direction on Beverly Boulevard, show us where, approximately, on the sidewalk you were standing?

Mr. Marcus: Can you mark it with an X?

The Witness (Marking the diagram): Right at the corner of the market.

Mr. Marcus: Make it a little bit bigger, will you, please?

Q. (By Mr. Bender): Mr. Freeman, you didn't stand in one place, did you?

(Testimony of Bill W. Freeman.)

Mr. Marcus: Well, you asked him where he was standing, and he marked it "X."

Mr. Bender: That was approximately 7:00 o'clock in the evening.

Q. Did you stand in one place all of the time you were there? A. No, I didn't.

Q. What did you do?

A. Well, I moved to the front of the sidewalk next to the telephone pole, purchased a newspaper, walked back, and just generally walked right in that area.

Q. You were purportedly engaged in conversation [368] occasionally with Agent Gullon, weren't you? A. Yes.

Q. During the time you were on the sidewalk did you at all times look in any particular direction?

A. Well, while I was on the sidewalk I generally looked at Agent Gullon and when he would say——

Mr. Marcus: Just a moment. Never mind what he said.

Q. (By Mr. Bender): When he would say something to you?

A. When he would say something to me, I would look in the direction of Agent Ramirez or in the other direction—in other words, I was pretending to engage in conversation.

Q. On the sidewalk? A. On the sidewalk.

Q. For the purpose of distracting attention from you and the possibility that you might be ascertained to be a Narcotics Agent or officer?

A. Yes.

(Testimony of Bill W. Freeman.)

Q. While you were standing there did you observe where Agent Ramirez was? A. Yes.

Q. Where was Agent Ramirez?

Mr. Bender: Mark it with an X, please.

(The witness marks the diagram.)

Mr. Bender: It is a pretty small area there, counsel.

Mr. Marcus: Make a small X. [369]

The Court: Yes, make a small one.

Q. (By Mr. Bender): From now on we will refer to that X as Car No. 2.

Mr. Marcus: He hasn't said "car." He said Agent Ramirez.

Q. (By Mr. Bender): We will refer to it as the approximate vicinity of Agent Ramirez. Was Agent Ramirez in an automobile when you first saw him?

A. Yes.

Q. What type of automobile?

A. Black convertible Mercury, I believe, 1953.

Q. When you first observed Agent Ramirez, did you observe any other car parked parallel with the Government's car? A. No.

Q. Directing your attention to about 7:30 in the evening on May 17, 1956, what, if anything, did you observe at that time that concerns this case?

A. I observed coming east on Beverly Boulevard and stopped at a red light here, approximately, a 1940 Chevrolet—I believe it was a Chevrolet, a dirty color—a cream-colored dirty car, and driving it I observed that it was the defendant Lozoya.

(Testimony of Bill W. Freeman.)

Q. How did you recognize the defendant Lozoya at that time, if you did? Did you recognize [370] him?

A. I recognized him as fitting the description of defendant Lozoya, as shown me by Agent Ramirez. He had a photograph of the defendant.

Q. He had shown that to you before that evening or at least before the time you saw the car approaching the intersection? A. Yes.

Q. What happened to the automobile after it approached the intersection and stopped at the red light? Where did it go?

A. It turned right here, where I lost it from view. I next saw it parked directly in front of the vehicle Agent Ramirez was sitting in.

Q. In which direction was the automobile being driven by the defendant facing at the time you first saw it parked directly in front of Agent Ramirez' automobile? A. Facing east, I believe.

Q. Which direction was the Government's vehicle facing at this time, in general?

A. Facing north.

Q. What occurred at that time?

A. I observed that Agent Ramirez—I was not watching all of the time—when the car arrived there—I waited for it to arrive, and turned back, and then I engaged in conversation with Gullon, and then I turned back and observed [371] Agent Ramirez was sitting on, I believe, the driver's side of the defendant Lozoya's vehicle and appeared to engage in conversation with defendant Lozoya.

(Testimony of Bill W. Freeman.)

Mr. Marcus: Will you mark that X on the driver's side of Lozoya's automobile?

(The witness marks the diagram.)

Q. (By Mr. Bender): What occurred then?

A. I immediately turned back. I just turned around to see, myself.

Q. Turned around to face Gullon to avoid suspicion? A. Yes.

Q. That was your thought, wasn't it?

A. Yes.

Q. Did you then later turn back and look in the direction of Agent Ramirez again?

A. Yes, I did, when——

Q. What did you observe when you looked back again?

A. I looked back and observed the defendant's vehicle was parked on the left side of Agent Ramirez' vehicle facing north.

Q. Will you estimate what distance separated these two vehicles—that is, the two sides?

A. About four or five feet, approximately.

Q. What did you observe happen then?

A. I observed defendant Lozoya was standing at the [372] rear of his vehicle with the trunk open.

Q. Did you actually see him open the trunk?

A. No, I didn't.

Q. Did you see the lid of the trunk as being up?

A. Yes.

Q. What happened then?

A. I turned around again, and in my own mind

(Testimony of Bill W. Freeman.)

I believe he was about to deliver the marijuana that we heard he was going to deliver.

Mr. Marcus: I move to strike that.

The Court: That may go out.

Q. (By Mr. Bender): What did you see?

The Court: Take the stand again. What did you see him do?

The Witness: I didn't see anything then, and I took part in the arrest.

Q. Where did you go then at this time?

A. I proceeded to the center of the market, to the rear of the market, because at that time I believed it was time to make the arrest.

Mr. Marcus: What was that last statement?

The Court: He believed that it was time to make the arrest.

Q. (By Mr. Bender): Then you didn't actually see the defendant carry any substance or burlap bag or anything in [373] his hands from one car to the other? A. No.

Mr. Marcus: He testified that he didn't see anything.

The Court: Yes, he said no.

Is that all?

Mr. Bender: No, your Honor.

Q. What did you do after you ran or traveled through the market?

A. I observed Agent Goodman approaching the defendant, and Agent Ramirez, so I immediately ran to where they were standing myself.

(Testimony of Bill W. Freeman.)

Q. Did you actually run through the market itself?

A. I moved quickly. I may have run about five feet or six feet or seven feet—I started to run, and then I decided I might have enough time to walk through without creating too much disturbance.

Q. What was your thought in going through the market?

Mr. Marcus: Counsel, please.

Mr. Bender: State of mind.

Mr. Marcus: What difference does it make—his state of mind?

The Court: I'll sustain the objection.

Mr. Bender: All right, your Honor.

Q. After you exited from the market, what did you do?

A. I ran over to where the defendant was standing with [374] Agent Ramirez and reached the area just a few seconds—I couldn't tell exactly how much longer—a few seconds after Agent Gullon had arrived there, and with Agent Gullon placed defendant Lozoya under arrest.

Q. Did you hear him place him under arrest?

A. Yes.

Q. What did he say, if you recall?

A. I can't remember the exact words. I believe it was, "You're under arrest. We are Federal Narcotics Agents." I believe that is what he said.

Q. Mr. Gullon said he was a Federal Narcotic Agent? A. Yes.

Q. What happened then?

(Testimony of Bill W. Freeman.)

A. We then proceeded to question the defendant or ask him—I didn't question him myself. I stood there and kept the defendant under my observation, because I didn't know but what he might give an argument or something.

Q. Did you see Agent Goodman have the Government's Exhibit 1 in his hands at any time at the scene of the arrest? A. Yes.

Q. Relate what occurred with reference to that incident. What did you observe happened?

A. Agent Goodman asked the defendant——

Q. Defendant who? A. Lozoya. [375]

Q. Is that the gentleman seated at the counsel table here behind Attorney Marcus? A. Yes.

Q. What did he ask him?

A. He asked him what was in that sack.

He says, "What sack?"

"The sack I saw you take from your car and put in this fellow's here," indicating Agent Ramirez' car.

He says, "I don't know what you're talking about. What sack?"

Agent Goodman, during the conversation, was walking to the back of the automobile, opened the trunk and removed this large burlap sack or bag and stated it was "This god damn sack" is what he said.

Q. What did the defendant say to that, if anything?

A. He says, "I have never seen it before," or something like that. He wouldn't admit anything.

Mr. Bender: You may cross-examine.

(Testimony of Bill W. Freeman.)

Cross-Examination

By Mr. Marcus:

Q. Do you pronounce that Freeman, sir?

A. Yes.

Q. Mr. Freeman, were you with Officer Goodman when you started to run? A. Yes. [376]

Q. How far were you standing from him at that time? A. From Officer Gullon?

Q. Officer Gullon? A. About two feet.

Q. When you started to run, how far were you from him at that time? A. Oh——

Mr. Bender: I didn't hear the question.

Q. (By Mr. Marcus): How far were you from Officer Gullon when he, Officer Freeman, started to run toward the back? How far were you from him? You said a few feet, didn't you?

A. Approximately ten feet maybe.

Q. Ten feet?

A. Ten—I don't remember exactly.

Q. Well, were you talking to him about that time? A. Yes, I was talking to him.

Q. You were close enough to talk to one another, were you? A. Yes.

Q. Were you the same distance, approximately, as you and I are at this moment?

A. When we were talking?

Q. Yes.

A. No, I was closer than that. [377]

Q. How about this distance?

(Testimony of Bill W. Freeman.)

A. Varying between that and maybe closer.

Q. And you were talking to him at the time?

A. Yes.

Q. And then did you start to run toward the back?

A. I moved quickly. I didn't start to run until I entered the market.

Q. When you entered the market, how far were you from the door of the market at that time?

A. Well, the market is an open front, so from the entrance on this side was about, oh, five or six feet approximately or maybe less.

Q. Within five or six feet to the entrance of the market? A. Yes.

Q. That is, from the position that you were on the sidewalk you were five or six feet from the entrance of the market; is that correct?

A. Yes.

Q. And Officer Gullon was within two or three feet from you?

A. Approximately. I don't remember the exact measurements.

Q. So you went through the building at the time, didn't you? [378] A. Yes.

Q. Did Officer Gullon go through the building?

A. No, I didn't see him.

Q. Did he run along with you?

A. I don't know what he did.

Q. Well, if you were together and you started to run, how did you happen to start running at the time?

(Testimony of Bill W. Freeman.)

A. I saw the trunk was open. I said, "This must be the time," while I engaged in conversation with Gullon, and then I started to run.

A. Yes.

Q. You and he were talking to one another?

A. Yes.

Q. And you were engaged in conversation with him at the time? A. Yes.

Q. And you saw something lift up in the back of the car? A. Yes.

Q. You don't know whether it was a trunk or not, do you? A. Yes, I do; it was the trunk.

Q. It was the trunk of whose car?

A. Of the defendant's vehicle.

Q. Did you see anything else happen at that time?

A. I didn't look any longer. I just glanced real [379] quick and saw that.

Q. And that was at the time the trunk of the car was going up?

A. I noticed the trunk. I didn't notice any movement. I glanced real quick and then moved.

Q. You went through the building?

A. Yes.

Q. Did you see Officer Gullon go along with you?

A. No.

Q. Where did he go?

A. Do you want my opinion?

Q. Not your opinion. Where did you see him go?

A. I next saw him approaching the defendant.

Q. At least, you were closer to the front of the building, were you not, than you were to the wall?

(Testimony of Bill W. Freeman.)

A. What wall?

Q. The east wall of the building. You were closer to the front of this building than you were to this wall, weren't you?

A. No, I was closer to the wall.

Q. You were closer to the wall? Did you go around to go through the building, or were you directly in front of the building at the time?

A. I was standing right there at the corner where I could turn around and look at any [380] time.

Q. I didn't ask you that. My question was, weren't you in front of the building, so when you started to run you ran right through the building?

A. No, I was not in front of the building.

Q. How far were you from the actual front of the building?

A. By front do you mean front center?

Q. Any part of the front of the building. I haven't designated any particular portion of it. I mean the front of the building.

A. I was about two or three feet. Sometimes I was right up next to it.

Q. At the time you started to run you were right in front of the building, weren't you?

A. In front and one foot to the right, approximately.

Q. At least, when you turned around you went through the building, didn't you?

A. No, I went about three or four feet and then through the building.

(Testimony of Bill W. Freeman.)

Q. And you didn't pay any attention to Gullon at the time?

A. No, I was going to get into position.

Q. You didn't pay any attention to Gullon at the time? A. At what time?

Q. At the time you started to run? [381]

A. No, I didn't. I had to look where I was going.

Q. Didn't you see him at all as he started to run? A. No.

Q. When you went through the building, of course, you couldn't see anything back there, could you?

A. That is right, except the insides of the building.

Q. Did Gullon start going when you started going whatever way he went?

A. I don't know.

Q. When you got back there to the car Gullon was already there, wasn't he?

A. I stopped at the rear of the building to look again.

Q. Where did you look when you got to the rear of the building?

A. At the defendant and his vehicle.

Q. Did you see anything at that time?

A. At that time when I stopped I observed Agent Gullon approaching rapidly.

Q. How far was Agent Gullon from you at that time? A. Oh, approximately 15 feet.

Q. And how far was he away from you at that time? A. From me?

(Testimony of Bill W. Freeman.)

Q. Yes—Officer Gullon.

A. That is what I thought you asked the first place. [382]

Q. No. How far was he away from you?

A. About an equal distance almost, maybe a little further.

Q. 15 feet from you and 15 feet from the defendant, and you were stopped there? A. Yes.

Q. Did you see the defendant do anything at that time?

A. The defendant had his back to me.

Q. Did you see him do anything at that time?

A. He appeared to be engaged in conversation.

Q. How long did it take you from the time you started running through the building until the time you saw the defendant when you came out of the building—how long did that take? Was that just a matter of one or two seconds?

A. No, a matter of a minute, approximately.

Q. Took you a minute to go through the building?

A. No, because I stopped at the end and watched, and then I observed Agent Gullon approach and then I moved.

Q. From the time you started to run until the time you came to a stop and watched, how long did that take you?

A. Couldn't have been a full minute. Maybe 30 seconds, 45 seconds, something like that.

Q. You say you saw Officer Gullon. Where was he at that time when you came to a stop?

(Testimony of Bill W. Freeman.)

A. When I came to a stop, I saw him approaching the [383] defendants.

Q. Where was he approaching from?

A. From the north.

Q. Well, he was on the back of this parking lot at that time, wasn't he?

A. On the back of the parking lot?

Q. Yes, he was in the back of the parking lot—that is, the parking lot that is to the rear of the market?

A. To the rear and to the right of the market. That is where I saw him.

Q. Well, was it to the right of you?

A. To my left.

Q. To your left? And was he running at the time? A. Yes.

Q. Did you see Officer Ramirez do anything at the time you started to take off?

A. He appeared to be engaged in conversation with the defendant.

Q. Anything else?

A. No, I didn't observe anything else.

Q. Was he doing anything at the time except talking? A. I don't remember.

Q. Did he have anything in his hands at the time? A. I do not recall, sir.

Q. Didn't he have a package in his hand at that time? [384]

A. I do not recall seeing anything like that.

Q. Did you boys talk over what you were going

(Testimony of Bill W. Freeman.)

to do or what plans you had with respect to this matter before you went out there that evening?

A. Yes.

Q. At that time did you see Ramirez, or at any time did you see Ramirez in his automobile?

A. At which time did I see him?

Q. At any time did you see him sitting in the automobile?

A. You will have to make your question more clear. I don't understand.

Q. Did you see him sitting in his automobile at any time at the rear of that market?

A. Where I placed him, yes, right there where I put the X.

Q. Was he doing anything while he was in the automobile? A. Eating a banana, I believe.

Q. You saw him eating a banana?

A. I saw him with a banana in his hand, because we were there quite a long time before.

Q. How many bananas did he eat that you remember? A. I don't remember.

Q. This banana business didn't have any significance, [385] did it?

A. Yes, the prearranged signal was when the peddler delivered the marijuana he would throw the banana peel down when he saw it was marijuana.

Q. This package, to your knowledge, was never opened out there, was it? A. I don't know.

Q. Did you ever see it opened?

A. I was not observing that.

(Testimony of Bill W. Freeman.)

Q. Did you ever see the package at all?

A. I saw it after the arrest.

Q. You didn't see it at any time before?

A. No.

Q. You didn't see anybody transfer anything from one car to another, did you?

A. I was not looking that direction.

Q. I didn't ask you whether you were looking that direction. You said you were looking, you said you saw Ramirez eating bananas, you say you saw him seated in the car, you say you saw the defendant arrive, you say you saw him park his car. You mean to tell us now you weren't looking in that direction? Is that what you mean to say?

A. Will you repeat the question?

Q. Weren't you looking in that direction?

Mr. Bender: The Government objects to the question on [386] ground that there has been no time established.

The Court: Well, he can answer the question. I think you have about covered everything.

Mr. Bender: When, your Honor?

Mr. Marcus: Oh, that's all on that. I withdraw the question.

Q. Did you say you saw the defendant as he was approaching Poplar Street in an automobile?

A. Yes.

Q. How far up the street was he that you saw him in an automobile approaching?

A. Oh, approximately a hundred feet.

Q. A hundred feet? Do you know what the width

(Testimony of Bill W. Freeman.)

of this market is? You say you have yourself right in here now at that X. That is where you were all the time, weren't you, between here and the telephone pole? A. Yes.

Q. Do you know what the frontage of that market is? A. No.

Q. You have some idea. You were there for quite a long time, weren't you? A. Yes.

Q. What is the width of that market?

A. 40 feet, approximately.

Q. The frontage of the market is 40 feet? [387]

The Court: You asked him the frontage and then changed it to the width.

Mr. Marcus: Oh.

Q. The frontage of the market on Beverly?

A. It could be 50 feet, approximately.

Q. It could be 50 feet? A. Yes.

Q. If I told you that that market was 124 feet wide, would that refresh your memory a little bit?

A. I believe you have the wrong measurement, sir.

Q. Would that refresh your memory that the market was 124-foot frontage on Beverly Boulevard?

A. Does that include the parking lot, too?

Q. No, that doesn't include the parking lot. The parking lot and the market is 100 and——

A. It didn't impress me as being 124 feet.

Q. What is the width on Poplar Street?

A. About 36 feet, I would say.

Q. And you saw him up in the next block?

(Testimony of Bill W. Freeman.)

A. No; I saw him at Poplar and Beverly.

Q. As he approached the intersection?

A. I saw the car approach the intersection.

Q. And he was inside the car? A. Yes.

Q. So you were at least a couple of hundred feet from [388] a moving automobile, weren't you?

A. No; it didn't look like 200 feet to me.

Q. The car made a turn at Beverly and Poplar, didn't it? A. Yes.

Q. And he could have only been under your vision for a matter of a second inside an automobile?

A. No; he was parked at the red light—I don't know how long it was, and when he made a right turn he had to pause and I got a good look at his face.

Q. So you were able to identify a man in an automobile from the position you were standing at the end of that market to where the automobile was approaching at Beverly Boulevard on the intersection of Poplar; is that what I understand?

A. Resembling the description given to me.

Mr. Bender: Just a moment. The Government objects to the question on the ground that it is asking for a conclusion—you were able to identify.

Q. (By Mr. Marcus): You did identify the features of this man?

A. I saw enough to convince me it was the same automobile I saw arrive in front of Agent Ramirez' car in a few seconds.

Q. That isn't what I asked you. I am talking

(Testimony of Bill W. Freeman.)

about the person seated in the car, the features of the man. You [389] testified that you recognized the man approaching in the automobile?

A. Yes; I did.

Q. And I am to understand that you recognized the features as he was approaching the intersection of Poplar and Beverly?

A. No; as he was parked at Poplar and Beverly and making a right turn is when I recognized his features completely. I recognized the automobile approaching.

Q. Did you recognize the features of anyone else in that car? A. No; I did not.

Q. Did you see anyone else in the car?

A. Yes; there was somebody else.

Q. You couldn't recognize the features of that other person?

A. I was not looking at the other person. I knew the person driving the automobile would be the person I was interested in.

Q. You looked at the front of the car, you testified it was a yellow car—you said it was a dirty yellow, and you mean to tell us you didn't see the features of anybody else in the car?

A. I was not looking at anybody else in the car.

Q. When you are looking that distance you would have [390] to see two people, wouldn't you?

A. Yes.

Q. Did you see two people? A. Yes.

Q. Who was the other person?

A. A person known to me as Johnny.

(Testimony of Bill W. Freeman.)

Q. How long had you known him before that time?

A. I have seen him on one or two occasions.

Q. Before that occasion? A. Yes.

Q. Where did you see him?

A. On the first occasion I saw him make a delivery of marijuana to Agent Ramirez.

Q. When did he make a delivery of marijuana to Agent Ramirez—how long before this occasion?

A. Several months.

Q. How long? A. I don't know exactly.

Q. Where?

A. Intersection of—I can't remember now.

Q. Was this an employee of the Department, this Johnny you speak about?

A. He is a special employee.

Q. A special employee? And he was delivering marijuana to Ramirez? [391]

A. That was before he was a special employee.

Q. Before he was a special employee he was delivering marijuana? A. Yes.

Q. To Ramirez; is that right? A. Yes.

Q. What was done with that marijuana that Johnny delivered to Ramirez? What did you do with it?

A. It was retained as evidence for use in the prosecution of Johnny.

Q. Oh, you prosecuted Johnny?

A. That is right.

Q. And you retained that marijuana, did you?

A. Yes.

(Testimony of Bill W. Freeman.)

Q. And then you got him to be a special employee?

A. We don't like to use the term "informer," because we believe that anybody who works for us——

Q. I don't care what you call him. You said he was an employee?

A. That is a term used, "special employee."

Q. And this special employee was working with you? A. Not with me.

Q. With Officer Ramirez? A. Yes.

Q. Did Officer Ramirez give him marijuana to use on [392] occasion, too? A. No.

Q. Did he tell him to get marijuana to use on occasion? A. No.

Q. You say he delivered marijuana to Ramirez. Did Ramirez give him the marijuana to deliver?

A. Will you repeat the question?

Q. You say Johnny delivered marijuana to Ramirez. You say you saw that, didn't you?

A. Yes.

Q. And this was before this occasion involving Mr. Lozoya; is that right?

A. It has been several months before. It was before I even knew Johnny.

Q. I don't care how long it was. You actually saw that? A. I saw him deliver a package.

Q. How big a package was it?

A. (Indicating.) About five inches tall, three inches wide, two inches deep.

Q. You saw marijuana in that package, too?

(Testimony of Bill W. Freeman.)

A. I saw the package later and identified 140 marijuana cigarettes in it, yes.

Q. But it was marijuana? A. Yes. [393]

Q. Then you saw this same Villas in the automobile with Lozoya? A. Yes.

Q. You saw him as he parked there at the corner for the red signal? A. Yes.

Q. Why didn't you tell us that before, that you didn't recognize the——

A. I was not trying to recognize him. I already knew him. I was looking for the man behind the wheel.

Q. But I asked you the question directly if you recognized the party, and you said you couldn't.

A. I didn't understand the question.

Q. You didn't answer the question.

Mr. Bender: The Government objects on the ground that counsel is arguing with the witness, your Honor.

The Court: It is argumentative. You are about finished with him, aren't you?

Mr. Marcus: Yes; I am, your Honor.

Q. Did you come down to the station afterward?

A. Will you repeat the question?

Q. Did you come down to the Federal Building afterward? A. Yes.

Q. Were you here when Gullon was in there interrogating this boy? [394]

A. Was I in the—I was in the office of the Bureau of Narcotics in this building, yes.

Q. You know where the interrogation room is?

(Testimony of Bill W. Freeman.)

A. Yes.

Q. Were you in the next office?

A. Part of the time, yes.

Q. Did you see Officer Gullon go in there, too?

A. I don't recall whether he went in there or not.

Q. Did you hear any names being called the defendant? A. No.

Q. You heard Officer Goodman using bad language or foul and abusive language out there, didn't you?

Mr. Bender: Just a moment. The Government objects to the question on the ground that it is asking for a conclusion of the witness.

Mr. Marcus: Withdraw the question.

Q. Did you hear Officer Gullon cussing the defendant?

Mr. Bender: Same objection, your Honor.

The Court: Overruled.

Mr. Bender: Cussing is a conclusion.

The Court: Well, he can tell us. It will shorten it. Do you remember any such conversation?

The Witness: No; I do not.

Q. (By Mr. Marcus): Did Officer Goodman say anything to you at the time about striking the defendant? [395] A. No.

Q. He didn't mention it to anybody, did he?

A. At what time?

Mr. Bender: The Government objects on the ground that there is no foundation laid as to time.

The Court: I'll overrule it at this particular time.

(Testimony of Bill W. Freeman.)

Q. (By Mr. Marcus): Did Officer Gullon say anything to you in the Federal Building at any time about striking the defendant?

A. Yes; after he did; yes.

Q. Did he tell you he had struck him about the head?

A. I don't remember where he said. He told me he had to strike him.

Q. This defendant all of the time had his glasses on, didn't he? A. No.

Q. Who took his glasses off?

A. I don't remember.

Q. You saw him without his glasses?

A. In the Federal Building, yes.

Q. Did you book him at the county jail?

A. I was there, yes.

Q. Did you instruct the officers over there not to take any pictures of him? A. No. [396]

Q. Do you know that no pictures were taken of this man at any time?

A. Pictures were taken, because I saw them the next day or day after that.

Q. You saw the pictures taken of this fellow at the county jail at the time he was booked?

A. At least I believe they were pictures——

Q. Do you know that he has never had his picture taken in the course of booking up to the present time?

A. I requested photographs of him.

Q. Did you get any photographs?

A. Agent Ramirez, I believe, picked them up.

(Testimony of Bill W. Freeman.)

Q. I am not asking you whether Ramirez picked them up. I am asking you if you picked up any pictures? A. I never picked them up.

Q. You didn't either, did you? Did you see his eyes blacked when you took him there to book him?

A. No.

Q. Did he complain about not being able to hear through one ear?

A. No; he heard me very well when I——

Q. You booked him, did you?

A. I probably——

Mr. Marcus: Do you have the booking slip here?

Mr. Bender: May the record show that the witness has [397] not been allowed to answer the last question?

The Court: Well, the witness stated that he booked him over there.

Q. (By Mr. Marcus): Do you notice on this booking slip here that he claims a black eye?

A. No.

Q. You didn't see that? A. No.

Q. Read it. You booked him. Did you see the bruises on the right leg, on that booking slip?

A. No; I didn't.

Q. Is your name on this booking slip? Who is this by? A. My name isn't there.

Mr. Bender: By "this" you are pointing to the lower left-hand corner?

Mr. Marcus: Yes, "booked by."

Q. Did you sign your name to his booking slip?

A. I don't remember whether I did or not.

(Testimony of Bill W. Freeman.)

Q. Well, did you examine the booking slip after you booked the man?

A. This is a property slip. I never saw his property slip then.

Q. It says: "Recent injury or illness: Claims black eye, bruises on the right leg." Did you see that when that was filled out? [398]

A. That was not filled out in my presence. We fill out a form a little bit different than that.

Q. Did you see any bruises on his right leg?

A. No.

Q. Did you see any black eye? A. No, sir.

Q. He made no complaint to you at all?

A. No.

Mr. Bender: Just a moment. The Government objects to this whole line of questioning.

Mr. Marcus: I am through.

Mr. Bender: On the grounds that it has nothing to do with the case whatever.

The Court: He said he has finished.

Is that all?

Mr. Marcus: That is all.

The Court: Is that all?

Mr. Bender: No.

The Court: Mr. Bowler wanted to see me at 3:00 o'clock.

(Testimony of Bill W. Freeman.)

Redirect Examination

By Mr. Bender:

Q. Mr. Freeman, in what general vicinity did you see Johnny Villas make the delivery of marijuana to Agent Ramirez?

Mr. Marcus: Just a moment. [399]

Mr. Bender: You went into that on cross-examination, counsel.

Mr. Marcus: Please, I didn't say he made any delivery of marijuana of any kind. This officer doesn't know whether it was marijuana or sticks of wood in that sack.

It is objected on the ground that it assumes a fact not in evidence.

Mr. Bender: This witness has testified that Villas delivered marijuana.

The Court: I'll let him testify. Overruled. Go ahead.

The Witness: I was trying to think of the town or area, but it is east of Montebello, quite a ways east of Montebello.

Q. (By Mr. Bender): Did you in this case on May 17 or May 18, 1956, look into any of the paper bags which are marked in evidence as Government's Exhibit 1? A. Yes.

Mr. Marcus: That is objected to as being improper redirect examination, your Honor.

The Court: That is true, but I will let him answer it.

(Testimony of Bill W. Freeman.)

Mr. Bender: I think it is true.

I had a couple of points I forgot on direct examination.

The Court: I said I'll let you go ahead.

Mr. Bender: Thank you.

The Witness: Yes, I did look into the bags.

Q. (By Mr. Bender): Did you examine the contents of [400] any of the packages in the paper bags? A. Yes.

Q. Have you on prior occasions seen marijuana?

A. Yes.

Mr. Marcus: This would simply be corroborative now of the other officers' testimony.

Mr. Bender: That is true.

Mr. Marcus: We could stipulate with respect to his testimony that it would be substantially the same on direct examination and cross-examination as the previous witness.

Mr. Bender: If you will stipulate, counsel, that in this Agent's opinion the substance found in Government's Exhibit 1 appears to resemble marijuana. That is what I am getting at.

Mr. Marcus: Not in Exhibit 1; the substance that he saw at the time. How does he know? He hasn't even looked at this yet.

Q. (By Mr. Bender): Did the substance which you observed in the paper bags which were obtained in connection with this transaction from defendant Lozoya appear to resemble any substance with which you are familiar? A. Yes, sir.

Q. What substance? A. Marijuana.

(Testimony of Bill W. Freeman.)

Q. Did you inspect the contents of one of the paper [401] bags? It appears to have some initials on it. Do you see your initials there?

A. Yes; BWF right here.

Q. When did you place them there?

A. May 17th.

Q. Did you inspect the contents of the bag? What does the contents appear to resemble?

A. Marijuana.

Mr. Bender: I have about two other questions which are actually not redirect examination, your Honor.

The Court: Go ahead.

Mr. Bender: More properly direct examination.

Q. Mr. Freeman, you don't wear glasses, do you?

A. Yes, I do, occasionally.

Q. Would you put them on?

A. (Witness puts on his glasses.)

Q. Did you have those glasses on, on May 17th?

A. Yes, I did.

Q. What was the condition of your eyes with reference to the ability to see at a distance of approximately a hundred feet without your glasses?

A. Without my glasses it would be hard for me to distinguish features of a face, although I could distinguish profile and manner of walk.

Q. Did you have your glasses on at all during the [402] time you testified to here concerning this transaction? A. Yes, I did.

Q. What then is your general ability to distinguish objects at approximately a hundred or fewer feet with your glasses on?

(Testimony of Bill W. Freeman.)

A. Very good. I have 20-20, up to 20-15 vision with my glasses on.

Q. With reference to Agent Joe Ramirez, does he wear glasses?

A. No, not to my knowledge does he wear glasses.

Q. Similarly, the same question with reference to Agent Goodman; does he wear glasses?

A. Not to my knowledge.

Q. And Agent Gullon? A. No.

Q. So far as you know, they have no impediment of their ability to see? A. That is right.

The Court: As far as he knows. That is sufficient. Haven't you covered everything?

Mr. Bender: No further questions.

Recross-Examination

By Mr. Marcus:

Q. You didn't see any package or sack or parcels taken from one car to another, did you? [403]

A. No.

Q. You don't know whether or not there was anything transferred from one car to another, did you?

A. Yes, I do know.

Q. Did you see it transferred? A. No.

Q. How do you know if you didn't see it?

A. Agent Ramirez told me so.

Q. Not what Agent Ramirez told you. I'm talking about your own personal knowledge of what you saw.

A. I didn't see it. I told you that before.

Mr. Marcus: That's all.

The Court: That's all.

(Testimony of Bill W. Freeman.)

Government's case?

Mr. Bender: Yes, your Honor, but before resting I would like a moment to review to make certain I haven't overlooked anything.

The Court: We will take the afternoon recess.

(Recess.)

The Court: Does the Government rest?

Mr. Bender: Yes, your Honor.

Mr. Marcus: Take the stand, Mr. Lozoya.

REFUGIO GONZALES LOZOYA

being the defendant herein, called as a witness on his own behalf, being first duly sworn, was examined and testified as [404] follows:

The Clerk: State your full name, please.

The Witness: Refugio Gonzales Lozoya.

Direct Examination

By Mr. Marcus:

Q. State your age. A. 36 years old.

Q. Where do you live?

A. County, East Los Angeles, on 4320 Griffin Street.

Q. Are you married or single? A. Married.

Q. Your wife's name?

A. Juanita Lozoya.

Q. On May 17th, were you living with your wife?

A. I was.

Q. And family? A. I was.

Q. Where?

(Testimony of Refugio Gonzales Lozoya.)

A. 4320 Griffin Street, in East Los Angeles.

Q. Were you engaged in any business on that date? A. No, I was not.

Q. Were you employed at that time?

A. I was.

Q. Did you have any interest in any business at that time? [405]

A. I had to go and remove some equipment from my restaurant, because it was going to be taken over the following day.

Q. Did you have a restaurant prior to that time?

A. Yes, I did.

Q. What did you do with reference to that restaurant?

A. What did I do with reference to——

Q. Was the restaurant closed?

A. It was closed.

Q. Was it for sale? A. It was, sir.

Q. Do you know Johnny Villas?

A. Yes, I do.

Q. How long have you known him?

A. Well, I met him in 1951.

Q. Where did you meet him?

A. In the foundry. We worked together for about four or five months in El Monte.

Q. Did you see him in the early part of May, last year? A. Last year?

Q. I mean this year, 1956?

A. In the early part of May?

Q. In May sometime did you see him?

A. Yes, I did.

Q. Did you have a conversation with him? [406]

(Testimony of Refugio Gonzales Lozoya.)

A. Yes, I did.

Q. Did you have a conversation with him with reference to a restaurant? A. Yes, I did.

Q. Tell the court what you talked to him about?

A. Well, he came to my restaurant and——

Mr. Bender: Just a moment. The Government objects to the question on the ground that it is asking for hearsay conversation between this defendant and someone who is not before the court; for that reason, being hearsay, it is not admissible.

Mr. Marcus: He is a government employee. He was acting under instructions.

The Court: I will overrule the objection.

Mr. Bender: He was a special employee. There is no evidence that he was at any time employed as an agent.

The Court: I'll overrule it.

Mr. Marcus: Go ahead and give the conversation.

Mr. Bender: Further, there is no indication that he was ever a representative of the Government.

The Court: I'll overrule the objection.

Q. (By Mr. Marcus): What was said?

A. Well, he came over to my restaurant and we were talking there. He boiled me a cup of coffee and we talked about our previous work in the foundry and things like that. [407-408] He also said he was working for a trucking outfit.

Q. Just give me the conversation as to the restaurant.

A. So I told him if he knew of anyone that was interested in buying a restaurant, that I had mine

(Testimony of Refugio Gonzales Lozoya.)

for sale. So he said no, he didn't at that time, but that he would try and if he know anyone he would let me know.

Q. Did you hear from him after that?

A. Well, on the 7th——

Q. Yes or no. A. Yes.

Q. How did you hear from him?

A. Through the phone.

Q. He called you or you called him?

A. He called me.

Q. What did he say to you?

A. He said he had someone interested on that restaurant that he wanted to buy it.

Q. Anything else said about a meeting or anything?

A. Yes. He also told me that this person was with him and that he would like for me to go over so I could meet him.

Q. Did he tell you you would meet him at any particular place?

A. Yes. He told me he would meet me on Garfield and Beverly Boulevard. [409]

Q. Did he set a time for you to meet?

A. Well, yes; it was about 7:00 o'clock in the evening.

Q. Did you meet Villas at Garfield and Beverly Boulevard? A. Yes, sir.

Q. About 7:00 o'clock, was it?

A. About 7:00 o'clock.

Q. On May 17th? A. On May 17th.

Q. Did you talk to him? A. Yes, I did.

(Testimony of Refugio Gonzales Lozoya.)

Q. What did he say to you?

A. Well, he got off his car, and then I asked him, "Where is the party that is interested on the place?" So he says, "Well, he is waiting further down." I says——

Q. He is waiting for you where?

A. He is waiting for me on the market.

Q. He was at a market?

A. It was a market, yes.

Mr. Bender: May the Government have the same running objection to all this conversation, your Honor?

The Court: Yes.

Q. (By Mr. Marcus): Then did you proceed to the market?

A. Yes. Well, he told me that he would go with me. [410] So we drove down to the market that the fellow was out there waiting.

Q. Did you go to the market?

A. Yes, we did.

Q. Did he direct you where to go?

A. Yes, he did.

Q. What did he say to you? How did it go?

A. Well, we went down there, but while we were driving we kept on talking just, you know, he told me how come I wanted to sell, that if I didn't make any good on the restaurant.

So I said, "No," I said, "My wife is sick. She is not feeling too well, and I am working."

Q. Where were you working at the time?

A. I was working for Trade Paper Company.

(Testimony of Refugio Gonzales Lozoya.)

Q. What kind of work were you doing?

A. It is warehouse. I was combination, their truck driver and warehouseman.

Q. How long had you worked for that company before May 17th? A. Three weeks.

Q. And before that time what did you do?

A. I was working at the restaurant with my wife.

Q. Well, you drove into the market, on the lot there, did you? [411] A. Yes, I did.

Q. Did you see anybody there?

A. Well, there was a lot of people around there.

Q. About what time did you arrive there, Mr. Lozoya, at the market?

A. Well, it must have been about 7:30.

Mr. Bender: Just a moment. The Government moves to strike the answer of the defendant saying that there were a lot of people around there, as being a conclusion.

The Court: All right.

Q. (By Mr. Marcus): I'll ask him the question: Were there any people there at the market?

A. Yes, there were.

Q. Was the market open? A. Yes.

Q. Was the parking lot open? A. Yes.

Q. Were there cars there?

A. Yes, there were.

Q. How many?

A. Well, there was quite a few. I didn't actually count them, but there was more than half a dozen.

Mr. Bender: Same objection, your Honor, to the "quite a few."

(Testimony of Refugio Gonzales Lozoya.)

The Court: Well, he said more than half a dozen. [412]

Q. (By Mr. Marcus): Did you see anybody or meet anybody there on the lot? A. Yes, I did

Q. Whom did you see there?

A. Well, I see this party that I was supposed to meet Johnny Villas had told me.

Mr. Bender: The Government objects to the testimony and moves that it be stricken on the ground that it is not responsive to the question; that part "I was supposed to see" is not an answer.

The Court: Well, the man that Johnny was to introduce him to. I will let that remain.

Q. (By Mr. Marcus): You drove onto the lot, did you? A. Yes.

Q. Did you meet the man as you drove on, when you drove on the lot and came to a stop?

A. I met the man.

Q. And then what did you do?

A. I got off my car.

Q. Was your car parked on the open lot there at the time? A. Yes, it was.

Q. Then what did you do with your car?

A. I backed it in.

Q. Where? [413]

A. Right parallel to this Mr. Ramirez's car.

Q. Were you introduced to him as Mr. Ramirez?

A. Yes, I was.

Q. Then did you get out of your car?

A. Yes, I did.

(Testimony of Refugio Gonzales Lozoya.)

Q. And then what happened? Just turn around and tell the Judge the story.

A. Well, I got off and I was introduced to him by Johnny Villas, and he told me his name was Mr. Ramirez, and then I told him, I said, "Are you still interested in buying my restaurant?"

He says, "I never heard anything about a restaurant." He says, "What I want to buy is marijuana."

I told him, I says, "What gives you the idea that I am selling marijuana?"

He says, "Well, if you haven't got any," he says, "I got quite a bit of money to get me some."

I said, "Certainly not. I can't get you any."

So then at that time, well, he started—I was going to start walking off, you know, but he reached with his right hand into his left upper pocket on his shirt and drew out some money. He says, "Look, I have enough money here to buy it."

I said, "I'm not interested."

At that time some more officers arrived and just with [414] drawn guns and then he says, "Where is the stuff?"

I said, "I don't know what you're talking about."

Q. Who said, "Where is the stuff"?

A. I believe it was Mr.—what's his name—I don't know the officer's name, I mean, you know.

Q. Was he on the stand? A. Yes, he was.

Q. Was it Gullon? A. Gullon.

Q. Or Goodman or Freeman?

A. No, it was——

(Testimony of Refugio Gonzales Lozoya.)

The Court: Well, one of them. It doesn't make any difference.

Q. (By Mr. Marcus): One of the officers?

A. Yes. He told me, "Where is the stuff?"

I said, "What stuff?"

He says, "You know what I'm talking about."

I said, "No, I don't. I actually don't know what you're talking about."

So right away they went through my car and started searching my car—one of the officers got in the car and started searching my car in the front seat, pulled the keys out of my car and went to the back and opened my trunk, and then they came back. [415]

Q. Did you give anybody any key?

A. No, I did not.

Q. Did you have any keys in your hands at all?

A. No, I did not.

Q. Did you take any sack, this sack here in particular, or any of the objects here and put it in the other car? A. No, I did not.

Q. Then what happened?

A. Well, then, after they got through searching my car, they came to me and one of the officers, I believe, they asked Mr. Ramirez where was his car. So he says, "That car parked right there." So he said, "Give me the keys," he says. So he hands this officer the keys and went out to the trunk and opened his trunk and pulled out a gunny sack and they brought it before me, and Officer—I can't place the names—anyway, he pulled the sack out, pulled a bag out and

(Testimony of Refugio Gonzales Lozoya.)
showed me the bag and says, "Where did you get these stuff?"

I says, "I don't know what you're talking about." I said, "Why don't you ask the man who was driving the car you pulled it out from?

So then they asked him.

Q. What did they ask him?

A. They asked, "Where did you get this stuff?"

And he says, "I don't know. I just borrowed the car from my girl friend." He said, "Why don't you go get her?" He says, [416] "I don't know what was in that car."

So then they came back to me he says, "All right, you * * *"—called me dirty names there.

Q. What did he say?

A. He says, "All right, you son of a bitch * * *"

Mr. Bender: I move to strike "dirty names."

The Court: What did they say?

The Witness: He said, "All right, you dirty son of a bitch, where did you get it?"

I said, "I'm telling you, I don't know where it came from." I said, "Why don't you ask the man," again I repeated myself.

So he says, "All right, let's go." So then at that time they handcuffed me and handcuffed Johnny Villas and got this Mr. Ramirez and they came back to him toward his car, and then they put me and Johnny Villas in one car and they also put the gunny sack that they had in the trunk of that car, and then they drove us in to the Federal Building.

Q. (By Mr. Marcus): Did anybody at any time

(Testimony of Refugio Gonzales Lozoya.)
out there open that sack and look at the contents of it?

Mr. Bender: Excuse me. The Government objects to that question on the ground that it is asking for a conclusion of this witness as to anybody at anytime having done this. This witness can only testify to what he saw, not what someone may have done out of his presence or when his back was turned.

The Court: Overruled. Go ahead. [417]

The Witness: What was the question?

Q. (By Mr. Marcus): Did anybody open that bag?

A. Well, they opened the sack, yes, and they pulled out a bag and they looked at it and he said, "Yes, yes," he says, "its marijuana," so they——

Q. And did Mr. Ramirez open the bag?

A. Well, I don't believe so. It was the other officer, Goodman—Goodman, yes.

Q. Did you ever tell Mr. Ramirez that you had "good stuff"? A. I never did.

Q. And tell him that it was sixty dollars a pound? A. No, I didn't.

Q. Or fifty-seven dollars a pound?

A. No, sir.

Q. Did you ever tell him anything——

A. I never mentioned anything of the sort.

Q. After that you were taken to the station?

A. That is right.

Q. That is down here in the Federal Building?

A. That is right, sir.

(Testimony of Refugio Gonzales Lozoya.)

Q. Were you taken up to the interrogation room? A. Yes, I was.

Q. Tell the judge what happened up there.

A. Well, they put me in the interrogation room and this [418] officer here now present sat me down in a chair.

Q. Referring to Mr. Gullon?

A. That is right, and without any conversation he started slapping me around right away.

Mr. Bender: Just a monent. Mr. Gullon walked in. I don't know yet whether I'm going to use him on rebuttal.

Mr. Marcus: I will not make any issue of it. Go ahead.

The Witness: He started slapping me around already and started calling me "You son of a bitch" and this and that, and he said, "Better tell me where you got it from."

I said, "I don't know anything about it."

He said, "If you don't tell me where you got it from, I'm going to slap the hell out of you." In fact, he said he was going to kill me. He threatened me my life and everything.

Q. (By Mr. Marcus): What did he say?

Mr. Bender: The Government objects——

The Court: He is going to relate the conversation.

The Witness: He said—well, he was slapping me, and then he said that if I didn't tell him that he was going to kill me.

(Testimony of Refugio Gonzales Lozoya.)

Q. (By Mr. Marcus): Those were his words?

A. Those were his words, yes, sir.

Q. Were you ever knocked down?

A. Yes, I was. [419]

Q. How many officers struck you there?

A. Two.

Q. Who were they?

A. Well, Officer—this officer present here.

Q. Officer Gullon?

A. Yes, Officer Gullon—he is the first one that struck me, and when he got tired then he walked out and they made a phone call.

Mr. Bender: The Government moves to strike the statement of the witness "when he got tired."

The Court: Yes, that may go out.

The Witness: Then this Officer Miller came in, we'll say about 15 minutes later, and he also, without asking me any questions, just walked around a little and surveyed me for a while and then he started striking me again.

Mr. Bender: Who was that?

The Court: Miller.

Mr. Marcus: Miller.

The Witness: Yes.

Q. (By Mr. Marcus): Were you knocked down?

A. Yes, he did.

Q. Did anything take place while you were knocked down?

A. Yes; he was kicking me all the time.

Q. Anything said to you about escaping?

A. He did. [420]

(Testimony of Refugio Gonzales Lozoya.)

Q. Who? A. Mr. Miller.

Q. What did he say?

A. He said, "Let's give this guy a chance to escape." He says, "This way we can really have him."

Q. And then what did you say?

A. Well, I didn't say anything to it. I just stuck close to him all the time. I told him I loved my life too much to try to do that.

Q. Did you at any time make any statement or admission to them concerning this marijuana?

A. I never did.

Mr. Bender: Just a moment. The Government objects to that question and answer on the grounds that it is a conclusion of the witness.

The Court: No, the Officers testified that he didn't make any admissions.

Mr. Bender: Other than the tacit silent one, your honor.

The Court: Well, yes, but——

Mr. Marcus: Tacit silent one?

Mr. Bender: Well, the "shh" there, pointing to the fan, you recall.

The Court: Yes, but there was no admission. I will let it in.

You may answer the question. [421]

Q. (By Mr. Marcus): You were in the room with Mr. Ramirez, there, weren't you?

A. Yes, I was.

Q. Did he start talking to you?

(Testimony of Refugio Gonzales Lozoya.)

A. Yes, he did.

Q. What did you tell him?

A. I told him I didn't know the man at all, I never seen him before. I said, "I don't even want to have a word with you at all."

Q. Did you at any time tell him to "shut up"?

A. Yes, I did.

Q. Did you suffer any injuries as a result of this beating? A. Yes, I did.

Q. What happened to you?

A. Well, when the first officer struck me, he hit me on my head, on my face, and on my eyes, direct like that.

Q. What happened to your glasses?

A. They dropped, they fell, when he slapped me, my glasses flew off of my face.

Q. Did you suffer any permanent injury?

A. Yes, I did. I got a busted ear drum because of that. He hit me with the palm of his hand with full force in my ear.

Q. Did any of the officers talk between themselves after your being beaten? Did they say anything between themselves [422] that you heard?

A. No. Well, yes, Officer Cantu, I think it was, told him, "Don't mark him up," he says, "Be careful and don't mark him."

Q. Was your picture ever taken across the street? A. Never was.

Q. What was the condition of your eyes when you were booked?

A. I was all swollen up. My head and my ear

(Testimony of Refugio Gonzales Lozoya.)

was hurting at the time and—well, my legs were all bruised and swollen.

Q. How did you get your legs bruised?

A. Well, Mr. Miller, when he struck me, when he was striking me, he knocked me down and kicked me, and then he told me to get up and sit down again. So I did. Then he sat on the table in front of me there and all of this time he remained there trying to make me confess that the stuff was mine, the marijuana that he claimed it was. So he just kept on swinging his leg and kicking me all the time on my legs.

Q. He was sitting on the table and you were sitting in the chair? A. That is right.

Q. And he swinging his legs and kicking you?

A. Just kicking me all the time, yes.

Q. What is the condition of your ear now? [423]

A. It is in very bad shape. I can't even hear through it. I have very poor hearing through it.

Q. Is there anything wrong with it now?

A. Yes, it is running all the time.

Q. Have you received treatment from a physician? Yes or No?

A. Yes, I had one treatment.

Q. At the county jail?

A. At the county jail.

Q. Did you have any discoloration of your eyes afterward?

A. Well, it discolored gradually, yes.

Q. You don't understand. Were your eyes black?

A. Yes, they were.

(Testimony of Refugio Gonzales Lozoya.)

Q. And you had bruises all over your head and legs? A. Yes, sir.

The Court: Is that all?

Mr. Marcus you may cross-examine.

Cross-Examination

By Mr. Bender:

Q. You say both your eyes were black, is that correct? Is that what you just said?

A. Pardon.

Q. Isn't that what you just testified, that both your eyes were black?

A. No, sir; I had my——

Q. Didn't you just testify to that? Didn't you just say that both of your eyes were black? [424]

Mr. Marcus: I asked him the question, "Were your eyes black?"

The Court: There has been testimony only about one eye.

Mr. Bender: Would the reporter read the record? The question was, "Were your eyes black?"

The Court: Well, it is minor. In other words, the fact that one eye is black is shocking to the Court.

Mr. Bender: Your Honor, it would be shocking to us.

The Court: Yes.

Mr. Bender: If the circumstances were as the defendant claims.

The Court: All right, one eye was black there. You are only contending about one eye?

(Testimony of Refugio Gonzales Lozoya.)

The Witness: Yes.

The Court: That is all the testimony is about, one eye.

Mr. Bender: No, your Honor, on direct examination——

The Court: I think it was an honest mistake. I think Mr. Marcus was contending all along that it was just one eye that was black.

Mr. Bender: That is the point.

Mr. Marcus: My question was, "Were your eyes black?" and his answer is "Yes." That is all there is.

The Court: Yes, I think it is minor.

Q. (By Mr. Bender): Mr. Lozoya, on May 17, at about seven-thirty in the evening, was it dark? [425] A. Yes, it was.

Q. Did you have your headlights on in the car?

A. No, I did not.

Q. Did you observe any other cars with headlights on at this time?

A. No, I did not.

Q. What do you mean, it was dark?

A. Well, the evening was falling in, sir. It is just about time to turn on your lights, but I didn't have the necessity to put them on at the time.

Q. At any time in May, 1956, did you have conversation with Johnny Villas concerning a sale or transfer of marijuana? A. Never have.

Q. What about back around October, 1955, did you have any conversation with Mr. Villas?

A. I never have.

(Testimony of Refugio Gonzales Lozoya.)

Mr. Marcus: Just a moment. Don't answer that.

The Court: He says, "No."

Mr. Marcus: It is improper. There is no direct examination on that.

The Court: I know, but I will let the answer remain.

Mr. Bender: I don't believe the Government on cross-examination, is limited to what was gone into on direct examination, your Honor.

The Court: I let him answer the question. I said I [426] overruled the objection. He said, "No."

Q. (By Mr. Bender): What kind of automobile did you own on May 17, 1956?

A. I owned a 1941 Chevrolet.

Q. What color?

A. It is a cream light color.

Q. Did you own the same automobile back around October, 1955? A. Yes, I did.

Q. What is it—a sedan? A. Pardon.

Q. Is it a sedan?

A. It is a two-door sedan.

Q. A two-door sedan? Back on May 17, 1956, you testified that you met Johnny Villas at the intersection of Beverly and what other street?

A. What date was that?

Q. May 17? A. Yes, sir.

Q. Where did you meet him?

A. I met him on Garfield and Beverly Boulevard.

Q. About how far is that from the intersection of Beverly Boulevard and Poplar Street?

(Testimony of Refugio Gonzales Lozoya.)

The Witness: I consider it about maybe three miles.

Mr. Bender: That was seven o'clock? [427]

Mr. Marcus: He doesn't hear very well, counsel.

Q. (By Mr. Bender): Was that about seven o'clock that you met him there?

A. At seven o'clock, yes.

Q. Right at seven?

A. Well, I was not looking at the clock at the time, but it was about seven o'clock.

Q. Now, directing your attention to the vicinity of the Beverly Ranch Market and specifically Beverly Boulevard where it intersects with Poplar Street, did you approach this intersection driving in an easterly direction on Beverly Boulevard?

A. Yes, I did.

Q. And that was Johnny Villas that was in the car with you? A. He was, yes.

Q. You were driving the car? A. I was

Q. Did you stop for a red light?

A. Yes, I did.

Q. What did you do after you stopped for the red light there?

A. Well, I made a right hand turn, and then I made a left hand turn and drove into the market through Poplar Blvd. or Poplar Street. [428]

Q. After you drove into this Beverly Ranch Market parking lot, where did you go?

A. After I drove there?

Q. Yes.

(Testimony of Refugio Gonzales Lozoya.)

A. I parked my car in front of Mr. Ramirez's car.

Q. Which direction was your car facing at this time? A. East.

Q. Which direction was his car facing?

A. Let see, that is south—north. North.

Q. North? A. Yes.

Q. Facing north? A. That is right.

Q. In the Beverly Ranch Market parking lot?

A. That is right.

Q. Did Agent Ramirez then have a conversation with you?

A. Well, I parked my car in front of his car and then I backed it in.

Q. Before you backed it in, didn't Johnny Villas get out of your car?

A. Well, he got off the car when I backed it in, yes.

Q. Didn't he get out of the car when you first stopped in front of the—— A. No, he didn't.

Q. You say he got out of the car when you backed it in. [429] While you were backing in, he got out of the car?

A. I was backing it in and he got off the car, and then I got off my car on the left-hand side and walked toward the front, and Johnny Villas went to Mr. Ramirez and then we met there at or about the front of the cars—not exactly in front.

Q. I'm sorry to stop you, but I just want an answer to the one question and not the whole transaction. Did you have a conversation with Agent

(Testimony of Refugio Gonzales Lozoya.)

Ramirez while your car was parked facing in an easterly direction in front of the Government Agent's car? A. No, I did not.

Q. Didn't Agent Ramirez come out, walk over there and talk to you at this time where you parked?

A. No, he did not.

Q. Then exactly how long was your car parked facing in an easterly direction before you backed it in?

A. Well, maybe half of second, just about half a second. It doesn't take very long.

Q. How did you recognize the Government Agent's car?

A. I didn't say I recognized the Government——

Q. How did you know to stop where you did stop?

A. Well, because Johnny Villas was in my car and he told me, "There is the fellow that wants to talk to you."

Q. At the time Agent Ramirez first spoke to you, did he [430] have a banana in his hand?

A. I never seen him eat anything.

Q. Never had a banana in his hand?

A. No, I didn't see it.

Q. Did he have an apple or any fruit in his hand? A. No, he did not.

Q. Well, at the time you had backed the car completely in there parallel with the Government car, was Johnny Villas still in your car?

A. At the time I backed in?

Q. Yes, at the time you stopped moving the car?

(Testimony of Refugio Gonzales Lozoya.)

A. Yes, he was. He didn't get off my car until I parked.

Q. And you didn't get out of your car either until you parked? A. That is right.

Q. Approximately how far, what distance separated your car and the Government's car?

A. Well, say, about three——

Q. At the time they were parked in a parallel position?

A. Say about three and a half or four feet.

Q. And approximately how much distance separated your car before you pulled it to a parallel position and when it was parked in front of the Government Agent's car?

A. When the car was facing east?

Q. Yes. [431]

A. How far apart it was from the Federal Car?

Q. That is right.

A. Well, I don't know, maybe about four feet.

Q. Didn't Agent Ramirez come up and have a conversation with you on the right-hand side of the car?

A. He never came to the right-hand side of my car.

Q. What about the left-hand side of your car?

A. He didn't come to the left-hand side of my car either.

Q. That is the driver's side, isn't it?

A. That is the driver's, yes.

Q. You were wearing your glasses at this time?

A. Yes, I was.

(Testimony of Refugio Gonzales Lozoya.)

Q. Did you have any conversation with Agent Ramirez? A. Yes, I did.

The Court: Just a moment.

(There was an interruption at this point.)

Q. (By Mr. Bender): Mr. Lozoya, did you have a conversation with Agent Ramirez in which he said to you, "Do you have something for me"?

A. No, I did not.

Q. Did he say anything in words or effect that would indicate, "Do you have something for me"?

A. No, he didn't.

Q. Did you say to him, "Yes, I have some llesca"?

A. I did not mention no such thing. [432]

Q. Did you say you had any marijuana?

A. No, I did not.

Q. Did you converse with him concerning the price of marijuana? A. I didn't get that.

Q. Did you talk with him about how much he would have to pay for marijuana?

A. No, I did not.

Q. From you? A. No, I didn't.

Q. Do you know what marijuana looks like?

A. No, I don't.

Q. Never seen it before? A. Well, no, sir.

Q. Never seen a marijuana cigarette?

A. Never have.

Q. Did you talk to Agent Ramirez that you were going to charge him sixty dollars a pound for marijuana? A. Never said no such thing.

(Testimony of Refugio Gonzales Lozoya.)

Mr. Marcus: That is objected to as having been asked and answered, your Honor.

Mr. Bender: No.

The Court: I will let the answer remain.

Q. (By Mr. Bender): Did you tell him you would sell him about ten pounds of marijuana for six hundred dollars? [433]

A. I never had any discussion concerning marijuana with Mr. Ramirez.

Q. Did you tell him you would sell him about ten pounds of stuff for six hundred dollars?

A. I never told him any such thing.

Q. Did he ask you about how much you would charge for selling him marijuana in the future?

A. No, he did not.

Q. Didn't you tell him that you might sell it to him for a little less than sixty dollars a pound?

A. There was no discussion of price or anything concerning marijuana, sir.

Q. Didn't you tell him that in the future you would perhaps let him have it for about fifty-three dollars a pound?

A. I never had said any such thing.

Q. Did you tell him you had to bring it across the border? A. Never had, sir.

Q. And that caused the price to be sixty dollars?

A. Never have.

Q. Did you get out of the car—your car?

A. Yes, I did.

Q. You got out on the left-hand driver's side?

A. That is right, sir.

(Testimony of Refugio Gonzales Lozoya.)

Q. Where did you go? [434]

A. I went around to the front of my car and I met Mr. Ramirez just about in the middle of, we will say, about half the size of the automobile, say about two or three feet from the front end.

Q. By "met him" you mean you were just introduced to him for the first time this time?

A. That is right.

Q. Had no conversation with him while your car was parked in front of his?

A. Never had; no, sir.

Q. He didn't walk up to you while your car was parked in front of his?

A. He walked up to me?

Q. Yes; did he? A. No, he did not.

Q. While the cars were parked parallel, what did you talk about?

A. Well, like I told you, I told him, I says, "Boy, you sure have a nice car, Mister."

He said, "Yes."

I said, "Are you still interested in buying my restaurant?" And he says, "I never been interested in buying any kind of business." He said, "What I want is marijuana."

I said, "What gives you the idea that I'm selling marijuana." [435]

So he says, "I will pay a good price for it if you get me some."

Q. Keep going—what else did he say?

A. Well, then he also said—let's see, what else was said.

(Testimony of Refugio Gonzales Lozoya.)

The Court: Well, you told us he showed you some money?

The Witness: Oh, yes, he raised his right hand into his left pocket in his shirt and pulled out a roll of bills and he says, "Look," he says, "I will pay a good price for it."

I says, "I don't have any such thing."

So at that time there was no more conversation because the Officers arrived.

Q. Well, hadn't someone, before the Officers arrived carried a bag from one car to the other car?

A. Not that I recall.

Q. Not that you recall? Did you see anyone do that? A. No, I did not.

Q. Where was Johnny Villas at this time?

A. He was standing right there by us.

Q. Didn't Johnny Villas carry a bag from one car to the other? A. No, he did not.

Q. Didn't Agent Ramirez carry that bag from your car to [436] his? A. No, he did not.

Q. Did you? A. No, I did not, sir.

Q. Did you see anybody carry a bag over there?

A. No, I did not, sir.

The Court: Anything else?

Mr. Bender: Yes, your Honor.

The Court: We will adjourn until tomorrow morning at 10:00 o'clock.

Mr. Marcus: Will you stipulate to the measurements?

Mr. Bender: I can't do that until I know the source of the measurements.

(Testimony of Refugio Gonzales Lozoya.)

Mr. Marcus: Well, they actually measured them with the tape. The party that measured them was out there.

Mr. Bender: If I can converse with him during the recess——

Mr. Marcus: I was trying to wind it up. I was trying to wind it up this evening.

The Court: I have been here all the time, Mr. Marcus. That is all I can do. I have been very patient in this case. I have been here three days now.

Make it 10:00 o'clock in the morning. Talk to your man out there. Maybe he will stipulate as to the measurements.

(Adjournment until Friday, July 20, 1956, 10:00 a.m.) [437]

Friday, July 20, 1956—10:00 A.M.

The Court: All right, you may proceed.

Mr. Marcus: Take the stand.

REFUGIO GONZALES LOZOYA

the defendant herein, called as a witness on his own behalf, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Bender:

Q. Mr. Lozoya, did you push Narcotics Agent Gullon in the Federal Narcotics office?

A. No, I did not.

(Testimony of Refugio Gonzales Lozoya.)

Q. Did you strike him? A. No, I did not.

Q. Did anyone take your fingerprints there?

A. Yes.

Q. At the Federal Narcotics office?

A. Yes.

Q. Who took them? A. Agent Cantu.

Q. Who was present when he took them?

A. I believe it was—well, the officers at that time, they were all coming in and out in the office there as far as that goes. [438]

Q. You are not confusing this with having your fingerprints taken in the county jail are you?

A. Pardon?

Q. Did you have your fingerprints taken in the county jail? A. Yes, I did.

Q. How many times did you have your fingerprints taken? A. All in general?

Q. Yes.

A. Well, I took them once at the Federal Building here, and they took them twice at the county jail, and the officer took them once more here at the marshal's office over here.

Q. In fact, hadn't Agent Gullon asked you to submit to having your fingerprints taken when you pushed him? A. Pardon?

Q. Hadn't Agent Gullon asked you to submit to having your fingerprints taken when you pushed him?

A. No, he never asked me to take my fingerprints at all.

(Testimony of Refugio Gonzales Lozoya.)

Q. That is when you pushed him?

A. I never pushed Mr. Gullon.

Q. At the Beverly Ranch Market on May 17th, how many Agents arrived with drawn guns?

A. Well, I could see, three or four of them.

Q. All had their guns out?

A. That is right, sir. [439]

Q. Who?

A. Well, the officers who were involved.

Q. Did Agent Ramirez have his gun out?

A. No, sir, he didn't.

Q. Did Agent Gullon have his gun out?

A. Yes, he did.

Q. Did Agent Freeman have his gun out?

A. No; I don't believe so. I don't think I even saw the man there close.

Q. Did Agent Goodman have his gun out?

A. Yes; he did.

Q. Now, you had just gotten out of your car, is that correct, when you were arrested?

A. That is right.

Q. And you just parked it there parallel with the Government's car? A. Yes; I did.

Q. Had you turned off the ignition?

A. Yes; I did.

Q. What did you do then?

A. I got off the car.

Q. What about the keys to the car?

A. They remained in the car.

Q. Did Villas get out of the car before you did?

(Testimony of Refugio Gonzales Lozoya.)

A. Well, we both got off just about the same time. [440]

Q. Did he take the keys?

A. No; he did not.

Q. Was your trunk locked?

A. Yes; it was.

Q. When did you lock it?

A. My trunk remains locked at all times, sir.

Q. When did you lock it before this occasion?

A. Well, that I can't remember. I haven't opened—used my trunk for quite some time.

Q. Was it locked when you drove the car into the Beverly Ranch Market?

A. It was locked; yes, sir.

Q. Well, was your trunk opened at the Beverly Ranch Market at any time before you were placed under arrest?

A. It was opened afterward; yes, sir.

Q. Was it ever opened before you were placed under arrest? A. No; it was not.

Q. What is the farthest distance you got away from your car at the Beverly Ranch Market parking lot before you were placed under arrest?

A. Well, I will say maybe a foot, a foot and a half—one foot—I mean we were close by all the time.

Q. When you were at the Beverly Ranch Market, did you know Agent Ramirez was a Treasury Agent? A. No; I did not. [441]

Q. On May 17 when you were in the interrogation room of the Federal Narcotics Office, did you

(Testimony of Refugio Gonzales Lozoya.)

then know that Agent Ramirez was a Treasury Agent? A. No; I did not.

Q. When you were alone in this interrogation room with Agent Ramirez, you remember he started to talk to you about the marijuana?

A. Yes; I remember him saying something like that.

Q. And didn't you shush him?

A. I never said no such thing.

Q. Didn't you point to the fan on the wall?

A. No; I did not.

Q. What did you do?

A. I just stood there. He tried to talk to me into saying something that was not so.

Q. You just stood there?

A. That is right.

Q. You didn't say anything?

A. I told him to shut up.

Q. What else did you say? A. That is all.

Q. Well, on direct examination, you remember yesterday you said, "I don't want to have a word with you at all." Do you remember that?

A. Well, I told him that I didn't want to talk to him; [442] to shut up. That is all I said.

Q. "I don't want to have a word with you at all"?

A. Well, technically, it means that I didn't want nothing to do with him.

Q. You didn't find out that he was a—that Agent Ramirez was a Treasury Agent until May 24, over at the County Jail, didn't you?

(Testimony of Refugio Gonzales Lozoya.)

A. That is correct.

Q. That is when he came in and made demands on you for this order form?

A. That is correct.

Q. From the Secretary of the Treasury?

A. Yes, sir.

Q. Do you remember telling him that you had the form? A. That I had a form?

Q. Yes.

A. No; I don't remember saying any such thing, sir.

Q. Do you further remember his telling you that you had eight days in which to produce it?

A. I remember him telling that; yes, sir.

Q. And you remember yourself saying then, "Well, I don't have an order form"?

A. No, sir; I didn't say that.

Q. Did you say that you did have an order form?

A. I didn't say I had an order form at all. [443]

Q. What did you say when he asked you if you had an order form?

A. I just told him, I said, "You give this to my lawyer. I ain't signing no papers." So then he told me, he said, "You don't have to sign."

Q. Did you tell him you had an order form?

A. No, I told him I didn't have one at that time.

Q. On the way to the Federal Building with Agents Gullon and Miller, didn't you tell them you were a little hard of hearing?

A. No, sir, I did not.

(Testimony of Refugio Gonzales Lozoya.)

Q. That you were having trouble with your ears?

A. No, sir.

Q. Did one of the Agents ask you if you were hard of hearing?

A. No one ever asked me anything.

Mr. Bender: No further questions.

Redirect Examination

By Mr. Marcus:

Q. On your way to the County Jail from the Federal Building you had some injury to your ear at that time, didn't you?

A. Well, when I got struck there in the office there, my head was all like, well, sore, you know, and——

The Court: Well, he has covered that.

Mr. Marcus: All right. [444]

That is all. Step down.

The Court: Were you able to stipulate on the distances last night, Mr. Bender? Did you and Mr. Marcus talk with the man in the hall?

Mr. Bender: About the distances?

The Court: Yes.

Mr. Bender: It was a lady, I don't think we were, because she didn't take the measurements.

Mr. Marcus: Well, that isn't so important.

The Court: Do you want to put somebody on about the measurements, or do you need to?

Mr. Marcus: Well, I can put the witness on now for the measurements.

The Court: Is he here?

Mr. Marcus: Yes.

The Court: All right, have him take the stand, or is that your case, Mr. Marcus?

Mr. Marcus: No, I have another witness for a few questions.

The Court: All right.

(Mr. Marcus leaves the Court Room momentarily and returns with a witness.)

Mr. Marcus: Take the stand. [445]

MARY CATHERINE MACIAS

called as a witness for the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. I will direct your attention to this gentleman seated at the to my right. I will ask you if you have ever seen him before?

A. The only time I saw him was that night that the trouble happened.

Q. The night the trouble happened?

A. Yes.

Q. Did you ever know this man or hear of him before that night? A. No.

Q. You are not personally acquainted with him?

A. No, I am not.

Q. Have you ever talked to him?

A. Not before that, no. Now I have.

Q. Well, today you have?

(Testimony of Mary Catherine Macias.)

A. Not today I haven't talked to him.

Q. But you are not personally acquainted with him, are you? A. No, I am not.

Q. Where did you live on May 17, 1956? [446]

A. 432 North Poplar, Apartment B.

Q. Apartment B, 432 North Poplar?

A. Yes.

Q. Speak a little louder, please.

Where is this house that you lived in with reference to Beverly and Poplar Street?

A. Well, it's the third apartment from the front going back—third apartment back.

Q. Is this house located to the rear of the Beverly Market? A. Yes.

Q. What is the full name of this market?

A. Beverly Fair Ranch Market.

Q. You live in the third apartment. Is that Apartment B you said?

A. That is Apartment B, yes.

Q. Will you step down to this board, please, and just point out where you live?

This is Poplar Street, this is Beverly Boulevard, this is the Ranch Market, this is the service station. Now where is your house?

A. It is right about here (indicating).

Q. Wait a minute; we will mark that with an X. Mark it with an X-A.

A. (The witness marks the diagram.) [447]

Q. We will mark this X-1. That is where your apartment is? A. Yes.

Q. Speak louder so the Judge can hear you.

(Testimony of Mary Catherine Macias.)

A. The back door is just a little bit behind the end of the market.

Q. The market building you mean?

A. Yes.

The Court: Ask her leading questions so that you can speed it along.

Q. (By Mr. Marcus): Did you see any cars parked there that evening?

A. Yes, I saw a 1952 Mercury, black, and then it was parked there quite a while, and then I saw the Chevy come in.

Q. You saw a Chevy come in? A. Yes.

Q. Didn't you see it park?

A. Park where?

Q. The market place where both cars were?

A. This here is the Mercury (indicating) and this here is the Chevy (indicating).

Q. Was your husband's car parked there, too?

A. Yes; he was next to the Chevy.

Q. Right there? A. Yes. [448]

Q. That is the approximate area where they were parked? A. That is just about it.

Q. Take the stand. Did you see anybody get out of the Chevy? A. No, I didn't.

Q. Did you see anybody in the Mercury?

A. Yes.

Q. Your back door is how many feet from where those cars were parked? A. Sixteen feet.

Q. How long were the cars there before you saw any excitment or any men run up there?

(Testimony of Mary Catherine Macias.)

A. Both of them were there about two or three minutes.

Q. Two or three minutes? A. Yes.

Q. Then what did you see happen?

A. A lot of men came up and I went outside.

Q. Where had you been before that?

A. I was in the kitchen there.

Q. Tell the court whether or not from your kitchen there you can see what is going on there?

A. Yes.

Q. Did you at any time see any person before the men came up take anything out of one car and put it in another car? A. No, I didn't. [449]

Q. Were the trunks of both cars facing your back door? A. Yes.

Q. Could you see them?

A. I could see the Chevy and a little bit of the Mercury.

Q. Did you see anybody open any trunks of either of those two cars before the men came up?

A. No, I didn't.

Q. When is the first time you saw the trunks opened?

A. When a man opened the trunk of the Mercury.

Q. What man was it that opened the trunk of the Mercury? A. I don't know his name.

Q. Have you seen him around this courtroom?

A. Yes.

Q. Have you ever been in a courtroom before

(Testimony of Mary Catherine Macias.)

and testified? A. No, I haven't.

Mr. Marcus: Is Mr. Goodman here, counsel?

Mr. Bender: No, your Honor, I don't see him.

Q. (By Mr. Marcus): Did you hear any conversation at that time? Did you hear anybody talking?

A. At the time the men came, or before the men came?

Q. Before the men came?

A. No, I didn't

Q. You heard no conversation? A. No.

Q. Did you hear any conversation after the men came? A. Yes. [450]

Q. What did you hear, to the best of your memory?

A. Well, the men got out of the car—the men that came up got out of the car.

Q. You saw them get out of the car?

A. Yes, and they came over and they pulled their guns—they had guns.

Q. Did you see guns? A. Yes.

Q. Are you sure you saw guns?

A. Yes, I saw guns.

Q. Then what?

A. Then they started cussing.

Q. Wait a minute. What did you hear them say?

A. Do I have to say it?

Q. Don't you want to say it? A. No.

Q. All right, if there is no objection, you won't have to say it. You heard cuss words? A. Yes.

(Testimony of Mary Catherine Macias.)

Q. And what did you hear besides the cuss words?

A. They asked the man that went and got the keys from this man here and——

Q. You saw some man get some keys from Mr. Ramirez?

That is his name. [451]

A. Yes, Mr. Ramirez.

Q. Do you recognize seeing this man here—Mr. Ramirez, there? A. Yes, I do.

Q. You saw him? A. Yes.

Q. And some man that came up there took some keys from this man? A. Yes.

Q. What did he do with the keys?

A. He went and opened up the back trunk of his car, the one Mr. Ramirez was in, he opened the trunk and he got a green sack out and he asked them—well, he was cussing and he asked him what he thought it was, and he said he didn't know.

Q. And Mr. Ramirez said he didn't know?

A. Yes.

Q. Then what happened?

A. They just kept going back and forth.

Q. Did you see Mr. Lozoya there?

A. Yes, I did.

The Court: Here is Mr. Goodman now.

Mr. Marcus: Oh, yes. Will you stand up, Mr. Goodman?

(Mr. Goodman stands.)

Q. (By Mr. Marcus): I will ask you if you have seen this man before? [452]

(Testimony of Mary Catherine Macias.)

A. Yes. That was the day it happened. He was the one that opened the trunk of the black car.

Q. Did you hear him use any cuss words?

A. Yes.

Q. Is he the one that used the cuss words?

A. Yes.

Q. Now, did you hear Mr. Lozoya say anything there?

A. He said he didn't know anything about it.

Q. Who asked him a question, that he gave that answer?

A. There were a lot of men there. I can't recall if one asked him, but I know he said he didn't know anything about it, and that is all that one time. I thought that Mr. Ramirez was the one that was in trouble.

Q. Then Mr. Lozoya said he didn't know anything about it; is that his words?

A. That is correct.

Q. And then did they leave there?

A. Yes, they said, "Well, we better get going" or something like that, and they all left.

Q. Were there many people around at the time?

A. My neighbors were looking out.

Mr. Marcus: You may cross-examine.

(Testimony of Mary Catherine Macias.)

Cross-Examination

By Mr. Bender:

Q. Mrs. Macias, about what time did [453] you first see the black Mercury convertible parked outside of the kitchen window?

A. It was around four-thirty when my husband got home from work.

Q. Four-thirty? A. Yes.

Q. Was that the same convertible that you saw later? A. Yes.

Q. Did it stay there all that time?

A. Yes, it did.

Q. Did you see it there at about seven o'clock?

A. Yes.

Q. Did you see it drive up about seven o'clock?

A. I didn't see it drive up.

Q. You didn't see it drive up at four-thirty either did you? A. No, I didn't.

Q. You don't know when it first arrived?

A. No, I don't.

Q. Who was driving it when it arrived?

A. Nobody was driving it. He was sitting there.

Q. When did you first see him sitting in the car?

A. Four-thirty.

Q. Did he stay in it from four-thirty on?

A. As far as I know, yes. It was there every time I looked [454] out or every time I went out of the house.

Q. When did you look out the next time?

A. I went back in the back. I don't know what time it was. I went quite a few times in the back.

(Testimony of Mary Catherine Macias.)

Q. Did you look out about five o'clock?

A. I don't know what time it was. I know I went out to the line and got the clothes down, and I went back to a girl friend's house. I don't know what time it was.

Q. You didn't know Agent Ramirez testified that he arrived there about seven o'clock.

A. I didn't know he testified to that? No, I don't.

Mr. Marcus: What he testified to is immaterial to this witness.

The Court: Yes, I will overrule the objection.

Q. (By Mr. Bender): Were you looking out the window all the time that the car was there?

A. No, I was not looking out the window all the time.

Q. You say that this back door of yours is a little to the east of the easterly edge of the Beverly Ranch Market?

A. It was right there where I put it.

Q. Without looking at the blackboard, can you tell us whether it is farther in a more easterly direction? A. What do you mean?

Q. Than the side edge of the Beverly Ranch Market? A. What do you mean? [455]

Q. Is it further off of Poplar Street than the edge of the Beverly Ranch Market?

A. Is it farther off of Poplar Street?

Q. Farther east?

A. No, I think going toward Beverly that my door is farther than it is from Poplar.

Q. But going down east on Beverly is your door

(Testimony of Mary Catherine Macias.)

farther east than the edge of the market building itself?

A. No, my door is right behind the corner of the market.

Q. And when you look out your window to look at the black Mercury, which direction did you look? Did you look to your right?

A. The Mercury was right on the side. My door is here, and the Mercury was right (indicating).

Q. A little bit to your right? A. Yes.

Q. Where was the Chevrolet?

A. Right next to the Mercury.

Q. That was a little bit to the left of the Mercury wasn't it? A. That is right.

Q. In other words, it was in a westerly direction?

A. Yes.

Q. Did you see the Chevrolet stop in front of the black Mercury? [456]

A. Not in front of it.

Q. Where did you see it stop?

A. Right on the side of it.

Q. Did you see it being driven into the market?

A. I saw it when it was just coming in like that, backing in.

Q. When you say just coming in, you saw it?

Mr. Marcus: She said backing in.

The Witness: Backing in.

Q. (By Mr. Bender): In other words, you saw it being backed in? A. Yes.

Q. You didn't see it before it was backed in, did you? A. No, I didn't.

(Testimony of Mary Catherine Macias.)

Q. Or being backed in?

A. I saw it when it was being backed in.

Q. You don't know then whether it stopped in front of the Mercury for any period of time and then was backed in?

A. I would have noticed it, because you can hear any car that comes up right away.

Q. Did you see it stop in front of the Mercury?

A. Not in front of the Mercury, no.

Q. Did you see it when it was first driven into the Beverly Ranch Market parking lot?

A. Yes, because he was backing in. [457]

Q. Where was it when you first saw it?

A. It was coming like this (indicating).

Q. It was how far away from you?

A. Sixteen feet, that is—it was backing in.

Q. It was backing in; is that correct?

A. Yes, it was coming like this.

Q. You didn't see it going forward at any time did you? A. No.

Q. What were you doing in the kitchen at the time you saw the car being backed in?

A. The dishes.

Q. Were you looking at the dishes from time to time? A. Yes, when I was watching them.

Q. Then you would look at the dishes and glance out the window, and look back at your dishes?

A. Yes.

Q. Which did you look at more of the time, the dishes or out the window?

A. I was looking ahead.

(Testimony of Mary Catherine Macias.)

Q. Which did you look at most of the time?

A. I suppose I was looking out. I don't know which I was looking at most of the time. I guess my dishes, what I was doing. But then I——

Q. But of course you would look out of the window on occasions, didn't you? [458]

A. Yes.

Q. At the time you looked at the window and saw the car being backed in and parked parallel with the Government black Mercury, did you look at that car continually from that moment until the officers made the arrest?

Now, this is important.

Mr. Marcus: I don't know how important you believe it is, counsel, but that has been asked and answered.

Mr. Bender: Not by me.

Mr. Marcus: You are talking about the black Mercury?

The Court: I will let her answer.

Mr. Bender: I am talking about the Chevrolet.

The Court: I overruled the objection.

Mr. Bender: Would you like the question asked again?

The Witness: Please.

Q. (By Mr. Bender): From the time you first saw the Chevrolet automobile being backed in and parked next to the Mercury, did you look at it without interruption, never looking back to your dishes or elsewhere until the Federal Narcotics Agents came with guns as you said?

(Testimony of Mary Catherine Macias.)

A. I was waiting to see who was going to get out of the car.

Q. But did you look at it all during that time, or did you at any time look back to your dishes?

A. Yes, I did look back to my dishes, but not long [459] enough where somebody could get out.

Mr. Marcus: I move to strike the answer as being not responsive to the question.

The Court: It may go out.

Q. (By Mr. Bender): Did you look back at your dishes several times? A. When?

Q. After the Chevrolet had been parked parallel to the Mercury?

A. Not too much. I was putting the dishes up in the cupboard then. My husband was helping me.

Q. Did you have any particular interest in this Chevrolet or Mercury?

A. I was just wondering how come it was sitting there so long.

Q. You were just casually watching it?

A. Yes, just being nosey.

Q. You had no particular knowledge that there was going to be any arrest made or anything?

A. That was the farthest thing from my mind.

Q. Did you at any time see the trunk of the Chevrolet lifted up and closed?

A. No, I didn't.

Q. You testified, if my memory serves me correctly, that you could only see part of the black Mercury? [460]

(Testimony of Mary Catherine Macias.)

A. Yes, from the kitchen.

Q. From the window you were looking out of?

A. Yes.

Q. This car that you say drove up and people got out of, that was not this Chevrolet or this black Mercury that drove up, was it? A. No.

Q. That was another car? A. Yes.

Q. And Federal Agents or at least men got out of that car? A. Yes, men got out of the car.

Mr. Marcus: Louder, please. I don't hear a word.

The Witness: Yes, men got out of the car.

Q. (By Mr. Bender): Did you see a man with a gun at the scene?

A. At the time the men came up?

Q. Yes. A. Yes.

Q. Whom did you see?

A. Mr. Goodman, I guess his name is.

Q. Mr. Goodman you guess? Did you see anyone else?

A. There were a couple of guns and I don't know which one was holding them. I know I saw the guns.

Q. You saw the guns, or just one gun? [461]

A. Two guns.

Q. Who was the other person that was holding it? A. I can't recall.

Q. At this time did you know the gentleman seated to my right at the counsel table was a Treasury Agent?

A. No, I thought he was the one that was in trouble.

(Testimony of Mary Catherine Macias.)

Q. Did you also observe the defendant Lozoya placed under arrest?

A. Yes, I knew they had taken him.

Q. So you thought he was in trouble also?

A. I didn't pay too much attention. I paid more attention to him.

Q. You were looking more at Agent Ramirez at the time? A. Yes.

Q. Was this dark when this happened?

A. It was just getting dark. It was not dark. You could see clear across the street.

Q. You could see clear across the street?

A. Yes.

Q. From where you were over to the service station, couldn't you?

A. If I stood over more, yes. I could see the end of the service station where the——

Q. From your window? Could you make out any of the pumps? [462]

Mr. Marcus: Wait a minute. She was not finished.

The Witness: I couldn't see any pumps from my window. I could see the gas station building from my window.

Q. (By Mr. Bender): The Pumps were outside of your view; is that correct?

A. I couldn't see none of that.

Q. Did you see a car across the street over at the service station?

A. No, I didn't pay any attention to that.

Q. Did you see any men standing on the side-

(Testimony of Mary Catherine Macias.)

walk in between where you would look over to the service station? A. No.

Q. Were you paying any attention to that?

A. No.

Q. Could you see the sidewalk which ran parallel on Beverly Boulevard along the edge of where the parking area is to the Beverly Ranch Market?

A. On Beverly Boulevard, could I see the sidewalk?

Q. Yes.

A. I couldn't see the sidewalk in front of the market.

Q. But you could see the sidewalk which extended to the street from the market?

A. Yes, some of it.

Q. From your window? A. Yes. [463]

Q. You testified that you saw Agent Goodman, the gentleman sitting in the second or third row?

A. Yes.

Q. At the scene of the arrest? Did you see him go to the government car and take out the burlap bag? A. What is a burlap bag?

Q. I will show you a portion of Government's Exhibit 1. A. The green bag?

Q. Well, green and brown, various colored bag. Did you see him take a bag that resembles this one out of the trunk of the car?

A. It looks like a green bag.

Q. Did you see him? A. Yes, I saw him.

Q. What did he do with it?

A. He set it down. He took it out of the trunk

(Testimony of Mary Catherine Macias.)
and he set it down and he opened that bag and there was a bunch of little bags inside.

Q. A bunch of little paper bags?

A. They looked like cloth bags from where I was. They reminded me of the money that is put in the Brinks truck.

Q. Did you go up and inspect them?

A. No, I didn't.

Q. You said it looked like?

The Witness: Yes. [464]

Q. (By Mr. Bender): Did they look something like what I have in my hand, a portion of Government's Exhibit——

A. No. They took them out real fast and put them back in.

Mr. Marcus: I didn't get the answer.

The Court: "No. They took them out real fast and put them back in."

Mr. Marcus: Counsel asked her did they look like that paper bag. Was there an answer to that?

Mr. Bender: Yes, she said that.

Mr. Marcus: Did you answer that? Did they look like that paper bag you saw taken out?

The Witness: No, they looked like little flour sacks to me—cloth bag.

Q. (By Mr. Bender): You say they took them out real fast and put them back? A. Yes.

Q. You were not paying any attention to that at that time? A. Yes, I was paying attention.

Q. Where were you standing?

A. Outside.

(Testimony of Mary Catherine Macias.)

Q. How close?

A. Well, off my porch and about the middle of the driveway. I was pretty close. [465]

Q. Who took these bags out?

A. Mr. Goodman.

Q. Didn't he go up with the big bag, the big gunny sack to the defendant and talk with the defendant Lozoya? A. Mr. Ramirez—he did.

Q. Didn't he talk with Mr. Lozoya at all?

A. Not that I know of.

Q. Did you watch him all of the time he was there?

A. Most of the time. Well, I was wondering what was in there.

Q. Didn't you hear him, in words or effect, when he went up to defendant Lozoya, say, "Where did you get this god damn bag"?

A. No, he asked Mr. Ramirez and he was cussing and he asked him what he thought was in the bag and he was cussing, and Mr. Ramirez said, "I don't know."

Q. You didn't hear him at any time ask the defendant Lozoya what was in the bag or where he got the bag?

A. I can't remember if he did or not. I can't answer that.

The Court: Is that all?

Mr. Bender: I think that is all, your Honor. Just a moment.

(A pause.)

(Testimony of Mary Catherine Macias.)

Q. (By Mr. Bender): Did you finish doing your dishes [466] before you went out?

A. No. Well, most of them—the dishes were almost done. It was just the rest of the cleaning.

Q. Was your husband home?

A. Yes, he was helping me.

Q. Was he looking out the window?

A. Yes.

Mr. Bender: No further questions.

The Court: That is all.

Mr. Marcus: That is all.

The Court: Step down.

Is that your case?

Mr. Marcus: Yes, your Honor.

The Court: The defense rests?

Mr. Marcus: Yes.

The Court: Anything further?

Mr. Bender: I believe the Government may put on a rebuttal witness. May I have a moment?

The Court: Well, let's go. We can't take a recess.

Mr. Bender: I don't mean a recess. I mean a moment.

The Court: Well, put him on, whatever it is.

Mr. Bender: The Government calls Agent Miller.

ROBERT E. MILLER

called as a witness for the plaintiff, being first duly sworn, was examined and testified as follows: [467]

The Clerk: State your full name, please.

The Witness: Robert E. Miller.

Direct Examination

By Mr. Bender:

Q. Mr. Miller, what is your business, profession or occupation? A. Federal Narcotic Agent.

Q. Were you so employed and engaged on or about May 17, 1956? A. Yes.

Q. On that occasion, on that date, did you strike the defendant Lozoya? A. No, sir.

Q. Have you ever struck the defendant Lozoya?

A. No, sir.

Q. Do you recognize the defendant Lozoya?

A. Yes.

Q. Who is he?

A. The gentleman seated at the table to my right in the blue nylon shirt.

Q. Were you present at the scene of the arrest of the defendant Lozoya on May 17, 1956, at the Beverly Ranch Market? A. Yes, sir.

Q. Were you one of the Federal Narcotics Agents who took the defendant Lozoya into the Federal Narcotics office [468] that evening?

A. Yes, sir.

Q. Who else was in the car?

A. Agent Gullon.

(Testimony of Robert E. Miller.)

Q. Do you recall any conversation between Agent Gullon and this defendant?

A. Well, most of the conversation was on the part of Agent Gullon.

The Court: I don't know as that is rebuttal, is it? He should have testified on direct examination.

Mr. Bender: This goes to show, your Honor, it bears on the question of the defendant having said that he became hard of hearing after he was boxed on the ear.

Mr. Marcus: That isn't important. It is immaterial.

The Court: Go ahead. It is quicker to hear it than to have a dispute.

Mr. Bender: The Government has no further questions, your Honor.

The Court: Step down.

Mr. Marcus: That is all.

The Court: Does the Government rest?

Mr. Bender: Yes, your Honor.

The Court: Do you want to comment at all? The court is prepared to make its decision.

Mr. Bender: Well, your Honor, it depends, of course, [469] upon what the court's decision is. The Government feels very strongly that the evidence has shown in this case quite conclusively that the defendant is guilty. Also, the Government has about five cases which we would like to cite to the court, if the court has any doubt at all about the custody of the narcotics involved here.

The Court: I have let that exhibit in. The court let in Exhibit 1.

Mr. Bender: Yes, your Honor. I have all those cases to make certain there wouldn't be any doubt in the court's mind.

The Court: Well, it is all in evidence.

Mr. Bender: With reference to the evidence, aside from the question of the marijuana involved, I am assuming now that the court—that there is no doubt at all in the court's mind but that it was marijuana which was obtained in the parking lot at the Beverly Ranch Market; that the marijuana was what the Narcotics Agents testified that they obtained, that they had marked the packages.

The Court: There is no question about that.

Mr. Bender: Then the major point that the Government makes is that at this time Agent Ramirez testified unequivocally to the transfer of this bag by the defendant from his car to the government car. Agent Goodman observed it, Agent Gullon observed it, and Agent Freeman observed the lid of the trunk go up, before Agent Freeman started his route [470] through the market to take up his position for the arrest. These four Federal Narcotics Agents observed this. The defendant Lozoya has unequivocally denied that anyone, including Lozoya, Villas or Ramirez took anything out of the trunk of his automobile and denied that he placed it in the trunk of the Government automobile. This is a flat contradiction of the testimony of the four Narcotics Agents, who are trained to observe who were present, and testified unequivocally to this.

The defendant having transported and transferred this marijuana into the Government car is guilty as charged.

Mr. Marcus: Judge, I'm not going to——

The Court: Mr. Marcus, you don't need to comment, because the court has made up its mind. I feel, in view of the denial by the defendant and no further proof, the defendant is entitled to the benefit of the presumption. The court will find the defendant not guilty on both counts.

Mr. Bender: What presumption is he entitled to, your Honor?

Mr. Marcus: The presumption of innocence.

Mr. Bender: Would the court set aside its ruling long enough for the Government to——

The Court: The court has ruled. It has found the defendant not guilty on both counts. What further is there for the Government to say? [471]

Mr. Bender: On the evidence present, it appears that this is the clearest case of guilt that has been presented in these Federal Courts.

The Court: I'm sorry, the court feels differently.

Mr. Bender: Your Honor, I didn't understand the basis of the court's presumption.

Mr. Marcus: I think it is presumptive of counsel to ask the court for an explanation for the court's decision. I have practiced law many years——

The Court: Well, Mr. Marcus, we have to be tolerant with youth, you know.

Call the next case, please. [472]

Thursday, January 10, 1957—10:00 A.M.

The Court: This Lozoya case is first.

The Clerk: No. 25033—Criminal, United States of America vs. Refugio Gonzalez Lozoya.

Mr. Marcus: Shall we proceed, your Honor?

The Court: Do you want to proceed?

Mr. Bender: Yes, your Honor, but in view of the fact that the Government is not the moving party, I assume that you will hear from Mr. Marcus first?

The Court: Yes; I will hear from Mr. Marcus. I am going to write an opinion in this case, counsel, but I haven't had a chance to do so yet as I have been working every day. I will when I come back, but I will give you the judgment of the court. I will write an opinion when I return, when I have time, but I don't see how I can do it now.

Mr. Marcus: Your Honor, the petition in this case has not been denied or traversed in any way. We, therefore, must accept the allegations of this petition as true.

It appears in this matter that the narcotic officers of the Narcotic Division of the Government of the United States and the employees of the Federal Government, as your Honor well knows, caused the arrest and prosecution of this defendant before the Federal Court. This trial [3*] took some time with the end result that the defendant was found not guilty of the charges against him.

Subsequent thereto, and after his discharge from custody, the same narcotic officers caused a com-

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

plaint to be filed in the State court, as alleged in this petition, signed and verified by the officer or the principal witness in the Federal Court and a Federal officer.

Pursuant to that complaint, a warrant was issued in the State court causing the arrest of the respondent and since the time of the arrest he has been incarcerated in the custody of the Sheriff of Los Angeles County.

The petition here further alleges that the Federal officers intend to testify in the State court and that the State case will be made upon the testimony of the Federal officers.

It is further alleged that the same testimony as adduced in the Federal Court hearing will be adduced in the State court.

We have cited in our petition the Rea case. We sincerely believe that the instant matter is a much stronger case, involving a violation of the defendant's constitutional rights, than the Rea case.

In the Rea case there was an unlawful search and [4] seizure and a suppression of the evidence.

In the instant matter, this court found the defendant not guilty, after a trial of the action. Now, he was found not guilty of the charge as alleged in the petition, as alleged and referred to in the Indictment filed in the Federal Court, and as alleged in the petition the same facts as contained in the Federal charge are also contained in the State charge.

The Court: Well, I am familiar with it, Mr. Marcus, and I will hear what the Government has to say.

Mr. Marcus: Thank you, your Honor.

Mr. Bender: Your Honor, opposing counsel contends that the petition of Lozoya has not been denied in any way, and the exact converse is true.

Paragraphs XVIII and XIX of the petition state in substance that constitutional rights of the petitioner have been violated or would be violated by testimony of the narcotic officers in the State court trial, and, of course, the brief by the respondents filed in opposition to the order to show cause clearly negate and controvert this assertion by the petitioner. In fact, we ask the one question, what right would be controverted, what right would be infringed, of petitioner Lozoya, if Federal narcotic officers testify as they should in State court proceedings? The answer is "No right"; opposing [5] counsel can point to no right that would be infringed.

Parenthetically, first on the Order to Show Cause it is the Government's understanding that it should have been filed as a civil matter and in view of the fact that there are no criminal proceedings pending in your Honor's court, it is improperly filed and improperly before this court and that the Chief Judge, who is the Judge handling such criminal matters, is the person before whom an order to show cause of this nature should be brought.

Placing that aside for the moment, it is the Government Respondents' contention that, in the absence of clear proof of a violation of Lozoya's rights by the Federal narcotics agents, no court has ever purported to have jurisdiction to enjoin the

agents from testifying. A Federal Court must have a valid cause, a violation of a Federal law before a judge of the court takes jurisdiction over the Federal narcotics agents and orders that they be enjoined from testifying.

Now, there is no unlawful search and seizure alleged in the instant Lozoya case. If it were alleged, it surely properly would have been alleged and raised in the trial court before your Honor, in Federal court proceedings. It is not raised.

The marijuana was validly, lawfully obtained by the Federal narcotic agents in performance of their duties. [6] As a matter of fact, there has never been a contention by Lozoya that it was his marijuana, and that is the indispensable predicate upon which any action to suppress evidence is brought. A person must claim that it is his, wrongfully taken from him, as in the Rea case where it was unlawfully searched and seized because there was a search warrant that was not valid. The Government admitted that in the Federal proceedings and as a consequence dismissed the Federal proceedings. Then, subsequently the State court proceedings was brought and the Federal narcotics agents, having unlawfully obtained that evidence, were subject to the jurisdiction of the Federal Judge and were amenable to an order to enjoin them from testifying in a State court proceeding.

The Court: Well, I have given a lot of thought to it, Mr. Bender, and I am going to file a written order.

Mr. Bender: Your Honor, the Government has

not had an opportunity to finish its argument, if it may.

The Court: All right.

Mr. Bender: Considering the Rea case, your Honor, and your Honor, of course, has read that case; it concerns simply an extension of Federal Criminal Rule 41(e), which permits a District Court to suppress evidence obtained by unlawful searches and seizures. The entire basis of the authority of the court there to act was based upon the [7] violation of law by the Federal narcotics agents in obtaining the evidence of marijuana. There is no similar violation by the Federal narcotics agents in this case.

That Rea case, if anything is authority for a denial of the attempt to enjoin these Federal narcotics agents from testifying in the State court. The Rea case states: The Federal Court may enjoin the Federal officer from using "the fruits of his unlawful act" as "the basis of testimony in the state court."

I ask, your Honor, and I challenge the petitioner to show us the unlawful act of the Federal narcotics agents in this case.

In the absence of acquisition of the marijuana by Federal agents by unlawful search and seizure, the provisions of 26 U.S.C. 2598(d) apply and give the Secretary of the Treasury alone the power to destroy or deliver marijuana to the Narcotics Bureau, as we have set out in paragraph III of our brief in opposition to the order to show cause.

Further, the Secretary of the Treasury, by T. D. Order 28, has provided that the Secretary of the

Treasury delegates to the Commissioner of Narcotics the authority and jurisdiction over all marijuana.

Now, certainly by judicial construction 26 U.S.C. 2598(d) would have no force and effect as counsel for [8] petitioner contends would be allowed to prevail, to the effect that this court could order the destruction of that marijuana, where there has been no violation of any Federal statute of law by anyone concerned, at least by anyone concerned, discussing now the respondents only.

Taking now into consideration the Manning v. Ketcham case, which the Government did not cite in respondents' brief, it states that a Judge acting in clear absence of jurisdiction was liable for false imprisonment, which was the result of a contempt proceedings instituted by the Judge for the refusal of a witness to answer a question, and it was held that proceeding in coram non judice is permissible if the Judge acts in the clear absence of all jurisdiction and that the Judge's honesty of purpose and sincere belief that he was acting in discharge of his official duty, when he incarcerated the witness for contempt, was not available as a defense. The case is Manning v. Ketcham, 58 Federal Reporter, 2d, at page 948.

The Court: 58 Federal Reporter, 2d, at page 948?

Mr. Bender: Yes, your Honor, particularly at page 949, in paragraphs 1, 2 and 3.

The Court: Federal Reporter, 2d.

Mr. Bender: Yes, your Honor.

Now, the question of double jeopardy is really not even before this court, because the only forum [9] that could properly be raised in is the forum where this defendant is being tried for the second time, and that, of course, is the State court. However, the Government has included consideration of the "double jeopardy" aspect in its brief in opposition, and the Government cites to the Court, initially, the United States v. Lanza, which is found on page 3 of the brief in opposition. That case holds that where the same act is an offense against both state and federal governments, its prosecution and punishment by the latter after prosecution and punishment by the former, is not double jeopardy.

For the record, your Honor, it appears that your Honor was just served with the respondents' brief, just handed a copy of the respondents' brief in opposition.

The Court: Yes, to the Order.

Mr. Bender: To the Order to Show Cause. Of course, that was filed, completely filed in proper accordance with the Rules of the United States District Court for the Southern District of California, Rule 3(d), which provides that "within five days after service of the notice thereof upon him," meaning the respondents, we may "serve and file a brief, but complete, written statement of all reasons in opposition thereto and an answering memorandum of points and authorities"——

The Government was served in this case on Friday of [10] last week, and yesterday was the fifth day; and, also, of course, the brief was filed timely.

The Court: Well, I worked very hard on this matter all week end.

Mr. Bender: Yes, your Honor. Well, I worked on it also.

The Court: Yes.

Mr. Bender: The Government's statement there was only with reference to the original petition not having been filed within the ten days. Of course, your Honor shortened the time, and properly so, but the Government filed this within the time permitted.

The Lanza case that I am referring to was decided by the Supreme Court of the United States.

The Court: You cite it here in your memorandum.

Mr. Bender: Yes, your Honor. It involved a prior conviction in the state court and imposition of sentence and a subsequent trial in the federal court based upon the same acts.

The Court: Of course, in this Lozoya case you have had an acquittal by this particular Court of this defendant.

Mr. Bender: That is even stronger, because the court in the Lanza case went into some discussion about the situation where the defendant then would serve two sentences based upon the same act. [11]

Now, in this case, the defendant having been acquitted, any equities, and, of course, they would only be moral equities and not legal equities—and I use the word "equities" in a very loose sense—would certainly militate to sustain the charge

against Lozoya, as against Lanza where he was convicted in both forums.

On page 4 of our brief, at line 17:

> "The jurisdiction of the federal courts over a prosecution against one charged with the unlawful possession of smoking opium is not exclusive."

The Court: I have read that.

Mr. Bender: Your Honor, the respondents ask what recourse our agents would have if they were cited for contempt by the State court?

The Court: Well, that isn't the particular problem at this time. That is not before the Court.

Mr. Bender: All right. Surely, your Honor, if it is a bald question of the State of California thinking that it has an action against a person who has violated one of its laws and the same act would be a violation of other law, the State of California should be permitted to litigate this matter with the witnesses and exhibits and as fully and properly as it may be presented before that forum, just as your Honor permitted it to be presented here.

The Court: Of course, you have a right to disagree with [12] the court. You know that. The court disagrees with you. I worked hard on the matter and I have prepared a written order which I am going to file and furnish a copy to each party. When I come back I intend to file a written opinion. So I will file the written order of the court and I will read the pertinent provision here.

Mr. Bender: May I have one more moment to review my facts, your Honor, first?

The Court: Yes, sir.

Mr. Bender: Has your Honor had an opportunity to peruse the brief to the extent of seeing that no constitutional guarantee like the Fifth Amendment——

The Court: Mr. Bender, can't you take the court's word for it that I worked all week end on this particular case?

Mr. Bender: Yes, your Honor, but you were just handed the brief in opposition.

The Court: Yes, but I am a graduate of a law school, you know. I say I worked all week end on this particular case and researched the matter. I spent hours on it.

Mr. Bender: Yes, your Honor.

The Court: And the Court feels very keenly about this case.

Mr. Bender: Your Honor, from the respondents' position it would be a wrongful thing for the court to enjoin the respondents from testifying in other proceedings elsewhere. [13]

The Court: I know you feel that way, but this Court feels on this matter of the order to show cause that when the court has tried this defendant and acquitted the defendant, that should end the matter. The court is going to read its written order at this time, and the court will file an opinion. I am sorry that I disagree with you, but that is the function of the court.

Mr. Bender: Your Honor, the Government was

just hoping to avoid any further controversy concerning the matter. It seems that it could be easily disposed of without any further difficulty, in the State court, without the necessity of any further Federal proceedings, and that it should go over to the State court where it belongs.

The Court: Well, I feel that the defendant having been tried in the Federal court and having been acquitted, that should end the matter. That is the view of the Court.

Mr. Bender: That is contrary to the law of the Supreme Court of the United States.

The Court: All right. I have considered the case. I am going to read the order of the court and the Government can take any position they want from here on, and I am in time going to file a written opinion. I am going to read the pertinent provision of the order, without going into the preamble I have written:

"It Is Hereby Ordered that said Jose [14] Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller are hereby permamently enjoined from testifying concerning the subject of said detection, apprehension, arrest, interrogation and the search and seizure of said nine and one-half pounds of marijuana, and said parties, together with their agents, associates and any parties having the said nine and one-half pounds of marijuana are ordered to forthwith return and deposit the same with the Clerk of this Courtroom, and all persons are restrained from ordering and

compelling the parties enjoined herein from testifying in any proceeding.

"Dated: This 10th day of January, 1957.

"/s/ THURMOND CLARKE,
"United States District
Judge."

I will file the original and serve each one of you with a copy.

We will take a short recess of four or five minutes before we take up the next case.

[Endorsed]: Filed March 5, 1957. [15]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John A. Childress, Clerk of the United States District Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 106, inclusive, containing the original

Indictment;
Commissioner's Transcript of Proceedings;
Waiver of Jury;
Trial Memorandum;
Receipt Signed by Joseph F. Bender;
Order to Show Cause;

Petition of Refugio Gonzalez Lozoya;

Marshal's Return of Service on Order to Show Cause;

Brief by Respondents in Opposition to Order to Show Cause;

Order Restraining Federal Officers From Testifying in State Criminal Proceedings;

Minutes of the Court for January 10, 1957;

Receipt for Money, Evidence, or Other Property;

Minutes of the Court for January 11, 1957;

Affidavit of Respondents in Support of Motion to Suspend Order or Injunction Pending Appeal;

Notice of Appeal;

Designation of Record on Appeal (filed January 14, 1957);

Designation of Record on Appeal (filed February 1, 1957);

and a full, true and correct copy of the Minutes of the Court on

June 4, 1956;

June 11, 1956;

July 17, 18, 19, 20, 1956.

B. 4 volumes of reporter's official transcript of proceedings had on

January 10, 1957;

July 18, 17, 19, 20, 1956.

C. Plaintiff's Exhibits 1 and 2 and Defendant's Exhibit B.

I further certify that my fee for preparing the foregoing record, amounting to $1.60, has not been paid by appellant.

Witness my hand and the seal of said District Court this 6th day of March, 1957.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15468. United States Court of Appeals for the Ninth Circuit. Jose Ramirez, Meyer Goodman, Michael Gullon, Bill H. Freeman and Robert E. Miller, Appellants, vs. Refugio Gonzalez Lozoya, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 8, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15468—CD

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

vs.

REFUGIO GONZALEZ LOZOYA,

Defendant-Appellee.

JOSE RAMIREZ, MEYER GOODMAN, MICHAEL GULLON, BILL W. FREEMAN and ROBERT E. MILLER,

Appellants,

vs.

REFUGIO GONZALEZ LOZOYA,

Appellee.

POINTS ON WHICH APPELLANTS INTEND TO RELY

Comes Now the United States of America, plaintiff-appellant herein, and Jose Ramirez, Meyer Goodman, Michael Gullon, Bill W. Freeman, and Robert E. Miller, appellants herein, by their attorneys, Laughlin E. Waters, United States Attorney; Louis Lee Abbott, Assistant United States Attorney, Chief, Criminal Division, and Thomas H. Ludlow, Jr., Assistant United States Attorney, and

set forth for this Honorable Court the points on which they intend to rely on appeal:

I.

Appellee is not subjected to double jeopardy by threatened prosecution by the State of California, merely because he has been acquitted of a related crime in the Federal courts.

II.

Appellee is not subjected to double jeopardy by threatened prosecution by the State of California, even though acquitted of a related Federal crime, where different offenses are charged and different facts are necessary to a conviction under each statute.

III.

The order appealed from is void as to certain appellants not served with notice of the hearing below.

IV.

The marijuana seized by the narcotics agents from appellee Lozoya, and admitted by the Court below, is legal, competent evidence.

V.

The order appealed from is not supported by the evidence.

VI.

The order appealed from is not supported by, nor responsive to, appellee's petition.

VII.

The Court below deprived appellants of their right to a fair hearing.

VIII.

The allegations of torture in the order appealed from are not supported by the evidence.

IX.

The allegations of the order that appellee was subjected to beating by appellants are not supported in any way by the evidence as to certain appellants.

X.

The alleged beatings administered by the appellants are alleged to have occurred subsequent to the seizure of the marijuana, and have no bearing on the commission of the crime charged.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Chief, Criminal Division;

/s/ THOMAS H. LUDLOW, JR.,
Assistant U. S. Attorney,
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 20, 1957.